

No. 2301

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Plaintiff in Error,
vs.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,
Defendant in Error.

VOLUME II.
(Pages 241 to 477, Inclusive.)

Upon Writ of Error to the United States District Court
of the Territory of Alaska,
Third Division.

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(Testimony of W. George Bibber.)

Q. Are the engineer and fireman in different compartments?

A. Well, the fireman is supposed to be back here—between the tank and fire door is where he is most of the time, and the injectors are back of the fire here, back of the engineer, and his duty is to attend to the injectors. He looks after that and the fire also.

Q. Where does the pilot look out from?

A. He has two windows in front here, one on each side. [242—190]

Q. Over the hood?

A. Over the hood, yes, sir.

Q. Now, turn to the next cut there and explain how the snow is thrown from them.

A. Well, there is one that is in motion, working. That snow is thrown to the right. The pilot works on this side now but there are times you can't see a thing in here—this pilot can't. Sometimes he goes for miles and can't see nothing. Take soft snow, making six or eight miles an hour, that snow just works with the wheel on both sides.

Q. The snow is thrown out then at an angle, forward? A. Yes.

Q. Whether to the right or left?

A. Forward and sometimes blows back. It depends on the wind.

Q. What I mean is, it is not thrown out horizontally, to one side?

A. Yes, it does, out of the wheel; the wheel takes up from both sides—it follows the wheel around.

(Testimony of W. George Bibber.)

Q. This last cut you refer to is on what page?

A. Page 6.

Mr. COBB.—I ask that pages 4 and 6 be admitted in evidence as illustrating this witness' testimony.

(The pages are torn from the book and marked Plaintiff's Exhibit "C" and Plaintiff's Exhibit "D" and admitted in evidence, without objection.)

(By Mr. BORYER.)

Q. Where did you get this book?

A. I got it out of Mr. Cobb's hand here a minute ago.

Q. Where did you get it before you got it from Mr. Cobb's hand.

A. I never saw it before. [243—191]

Q. You say you are a brakeman? A. I was.

Q. When? A. Ever since I have been here.

Q. Are you still a brakeman? A. Yes, sir.

Q. How long have you been braking?

A. About three years and a half, I guess. I have done some running here.

Q. But you are still rated as a brakeman?

A. Yes, I think so.

Q. You have had some experience around rotaries? A. Yes, sir.

Q. In rotaries? A. I was a pilot, that is all.

Q. Have you ever been in them when they were working? A. Yes.

Q. Have you been in the pilot-house when they were working? A. Yes, sir.

Q. And you say that the snow that is thrown by the wheel oft-times makes it difficult for the pilot to

(Testimony of W. George Bibber.)

see in front? A. Yes, sir.

Q. Has that been your experience when you were on the rotary—you have seen that for yourself, have you? A. Yes, sir.

Q. Do you know anything about the operation of a rotary, the running of it? A. I do in a way; yes.

Q. What do you mean by in a way?

A. From what little experience I have had as pilot.

[244—192]

Q. On a rotary? A. Yes, sir.

Q. Were you ever pilot on a rotary?

A. Yes, sir.

Q. Where? A. Here on this road.

Q. Where else? A. On the Great Northern.

Q. How long were you pilot on the Great Northern? A. About a month and a half.

Q. Were you on this train that went up when this accident happened? A. Yes.

Mr. BORYER.—That is all.

(By Mr. COBB.)

Q. Is there anything regarding this trip up and the accident happening there that you can testify to that has not been already testified to in the case?

A. I don't think there is.

(By Mr. BORYER.)

Q. Do you know all that has been testified to in the case? A. Well, I have heard it all.

Q. Do you know whether it was all true?

A. I couldn't say.

Witness excused. [245—193]

[**Testimony of Warren Taylor, for Plaintiff.**]

WARREN TAYLOR, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. Warren Taylor.

Q. Where do you live? A. Cordova.

Q. What is your occupation? A. Fireman.

Q. On what road?

A. The Copper River & Northwestern.

Q. How long have you been in the employ of the Copper River & Northwestern Railway Co.?

A. Off and on very nearly two years and a half.

Q. Were you in the employ of the Copper River & Northwestern Railway Co. in December, 1911, and January, 1912? A. Yes, sir.

Q. In what capacity?

A. As watchman on the rotary fleet.

Q. Were you watchman on the rotary that went out ahead of the train on the 30th of December, 1911?

A. Yes, sir.

Q. What were the duties of the watchman on that train?

A. Well, when they tied up, to clean the fires, clean the ash-pans, keep any exposed pipes from freezing up, calling the crews when it was ready.

Q. Where did you stay? A. In the caboose.

Q. Do you recall the circumstances—the time, I believe, is agreed upon—when you got to Bridge 75A? [246—194] A. Yes, sir.

Q. State whether or not you passed the bridge.

(Testimony of Warren Taylor.)

A. Yes, sir.

Q. About how far beyond the line did they go?

A. I should judge about a mile.

Q. Did they come back? A. Yes, sir.

Q. Do you know why they came back?

A. Yes, sir.

Q. Why? A. To get water.

Q. Do you know why they couldn't get water from one of the other engines?

A. The siphon hose was frozen up.

Q. How far back did you back before stopping—to what point?

A. You mean from where they got stalled, ran out of water?

Q. Yes. A. They backed to 75A, to the bridge.

Q. Did they stop on the bridge? A. Yes, sir.

Q. About how long did they stay there?

A. About an hour, maybe better than an hour.

Q. Then where did they go to?

A. In the meantime they had been unloading some coal off the local and backed up and loaded the coal on to the rotary.

Q. South of the bridge?

A. South of the bridge to a snowbank.

Q. And after they got the coal, where did they go to? A. 78.

Q. Stopped at 78? [246½—195] A. Yes, sir.

Q. Do you recall how long they stayed there?

A. I should say they were there an hour and a half or two hours.

Q. What is at 78?

(Testimony of Warren Taylor.)

A. A section camp and water-tank.

Q. That is the nearest section-house there, is it?

A. To the place of the accident? Yes, sir.

Q. How far down this way is it before there is another section-house? A. Mile 55.

Q. When you left there, do you know whether the section-men went up with you or not?

A. Yes, sir.

Q. You took them all to Teikhell? A. Yes, sir.

Q. You got into Teikhell at 5:45 the next morning?

A. Yes, sir.

Q. What did you do as soon as you got in there?

A. Went on up to the water-tank.

Q. With the rotary? A. With the rotary.

Q. And the other engines? A. Yes, sir.

Q. They were all taken up there to water?

A. Yes, sir.

Q. Did you get any orders that day to call the crew to come back?

A. I was told to call the crews as soon as the engines were ready to go back.

Q. What time did you call them? [247—196]

A. 12:30.

Q. 12:30 you called them to go on duty?

A. Yes, sir.

Q. That was your orders?

A. That was my orders.

Q. Did you wake up the rotary crew?

A. I woke up all the crews.

Q. The entire crew?

A. The rotary crew and the other pusher crew.

(Testimony of Warren Taylor.)

Q. Mr. Reed?

A. Mr. Reed was the first one up.

Q. Mr. Albright? A. Yes.

Q. Holden? A. Holden.

Q. And all the other crew?

A. And all the other crew.

Q. Do you know what Reed, Albright and Holden were doing in a general way from that time up to the time they got out at 4:15?

A. I couldn't tell just what they were doing. Reed came on the engine a few minutes after I called him and he lifted up some of those trap-doors in the pilot-house and looked around there awhile and said he had a lot of work to do, and he went and got some monkey-wrenches, tools and stuff to work with and the crew was there, and I went back to the caboose and stayed there awhile.

Q. Do you know whether or not he was at work generally up to the time the train left?

A. Yes, he was at work there. [248—197]

Q. Was Mr. Albright helping him?

A. I don't know whether Albright was helping him or not. I think Holden was up helping him, though.

Q. Now, do you recall the accident at which Reed lost his life as you came back to the bridge—do you recall the accident itself?

A. No, I do not. I was asleep at the time.

Q. You were asleep at the time the rotary went over? A. Yes, sir.

Q. Did you wake up?

(Testimony of Warren Taylor.)

A. It kinder woke me up but I was so used to the jar, the jar of the rotary, that I went back to sleep again right away.

Q. Did you wake up at all while you were there?

A. Terry came back and called me a few minutes later.

Q. Where did you go then?

A. I went up to the rotary.

Q. What did you do when you got there?

A. I looked around there a few minutes and Wilson and Scott were putting 23 back on the track and I helped them.

Q. What was 23? A. The head pusher.

Q. How much of that was off the track?

A. The pony trucks were off the track.

Q. What do you mean by that?

A. The two front trucks, small trucks.

Q. The two front trucks of the locomotive—that was all that was off?

A. That was all I could see off there.

Q. And they were up on the bank, at the end of the bridge?

A. Yes, they were on the ties. [249—198]

Q. Did you assist in getting Albright out?

A. No, sir; they had him out and in the coach when I got there.

Mr. COBB.—That is all.

Cross-examination.

(By Mr. BORYER.)

Q. You say that you took the section-men from the bridge up to Teikhell?

(Testimony of Warren Taylor.)

A. I did not—we took them from 78.

Q. Did you take them from 78 down to the place where you got your water?

A. We did not go from 78 to where we got water. We went from Mile 77.

Q. Then the first you saw of the section-men was when you reached Mile 78, after you had watered up your rotary at Mile 75A?

A. No, sir; we saw them at 77, where we ran into the drift—went out of water.

Q. At Mile 77?

A. Yes, sir; that is the first place I saw them.

Q. You had watered up the rotary then?

A. No, sir.

Q. Did you take them along down there with you to the bridge? A. Yes, sir.

Q. What were they doing at 77 when you saw them? A. I couldn't tell you.

Q. Were they doing anything when you saw them?

A. I just saw them walk over there; that is all.

Q. They walked over to the train? A. Yes.

Q. And then went with you down to bridge 75A?
[250—199] A. Yes, sir.

Q. They helped you to water up there?

A. I didn't see them watering up. I think they unloaded some coal back there.

Q. They went down and unloaded this coal that was on the local? A. Yes, sir.

Q. And went on with you then, when you left there, up to Teikhell, did they? A. Yes, sir.

Q. Do you know why they went to Teikhell?

(Testimony of Warren Taylor.)

A. Well, the coal was frozen. It was a very cold job getting them out and they were in a hurry, and they took the men from there up there to load up the coal on the rotary, to load up the coal on the rotary and the two pushers.

Q. That is part of the work of the section-men?

A. Yes, sir.

Q. You say they were in a hurry?

A. They seemed to be, the way I got my orders up there.

Q. What time did you take charge of the engines at Teikhell? A. A little after 8 in the morning.

Q. They had been up and watered and came back, had they? A. Yes, sir.

Q. Where were you sleeping? A. When?

Q. That morning? A. I wasn't sleeping.

Q. Were you awake? A. Yes, sir.

Q. When you got to Teikhell?

A. Yes, sir. [251—200]

Q. Were you awake the night you watered up your rotary at Bridge 75A? A. Yes, sir.

Q. What were you doing?

A. I went up to help them connect up the siphon, to siphon the water out of 23. I was awake about an hour before that, before we got to the bridge and I went up to help them take water.

Q. What work did you do up there?

A. I didn't do any because the siphon was frozen up and there was nothing to do.

Q. You went up and found it was frozen up? Then what did you do?

(Testimony of Warren Taylor.)

A. Backed down to 75A Bridge.

Q. I am speaking about the Bridge 75A—when you reached the bridge at 75A.

A. Going up?

Q. Coming back, that is, when you came back to take water. A. I was on the second pusher.

Q. Did you ride down from the point where you had stopped on the bridge to the second pusher?

A. Yes, sir.

Q. When you got down there what did you do?

A. I sat up on the seat box.

Q. Did you stay there all the time that you were taking water there?

A. Well, I was not on the seat box all the time. I got off the seat box once in a while.

Q. Were you on the rotary at any time?

A. Not at the bridge. [251½—201]

Q. Not at the bridge? A. No, sir.

Q. Were you on either of the other engines there?

A. No, sir.

Q. You didn't have anything to do at that point?

A. No, sir.

Q. You didn't do anything at all then?

A. I was on 21, keeping her alive and helping out.

Q. Whose engine was that?

A. That was Dan Barrett's; he was running it.

Q. Who was fireman? A. Charley Kitsman.

Q. Why didn't you help keep the other engines alive? A. There was a crew on it.

Q. Wasn't there a crew on this one?

A. There was.

(Testimony of Warren Taylor.)

Q. This engine was off the track, was it?

A. Part of it.

Q. What part of it was off?

A. The tank was off.

Q. Any other part of it off?

A. The back drivers might have been off but I am not sure.

Q. You don't know?

A. No,—part of the engine was on the bridge, though.

Q. Were you off the engine?

A. At no time there.

Q. You rode back in that engine?

A. Yes, sir.

Q. And you stayed on that engine?

A. Yes, sir.

Q. All the time that she was there?

A. All the time they were siphoning water.

[252—202]

Q. What was the fireman doing?

A. I couldn't tell you.

Q. What was the engineer doing?

A. He was sitting on the seat box.

Q. Sleeping? A. No, sir.

Q. You don't know where the fireman was?

A. I don't know. He might have been on the engine there at the time, too. I don't remember.

Q. Were you on there an hour and a half?

A. Something like that.

Q. And don't know whether the fireman was on there or not?

(Testimony of Warren Taylor.)

A. He might have been on there some of the time.

Q. Did you see them taking water?

A. I see them thawing a hole through the ice.

Q. Who did you see do that? A. Mr. Scott.

Q. Who else? A. I don't know who else.

Q. Did you see anyone else there?

A. I saw several around there but I don't know who they were.

Q. Did you see Albright? A. No, sir.

Q. Did you see Reed? A. No, sir.

Q. Did you talk with Albright or Reed while you were there? A. Not at the bridge; no, sir.

Q. (By Juror MANTHEY.) It is not the watchman's duty, as long as the crew is on duty, to keep the engines alive, is it?

A. No, it is not; it is just a case of doing a favor.

Witness excused. [253—203]

[Testimony of Herman Albright, for Plaintiff.]

HERMAN ALBRIGHT, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. Herman Albright.

Q. Where do you reside? A. Cordova.

Q. How long have you lived here?

A. About three years.

Q. What is your occupation? A. Fireman.

Q. Whom for?

A. For the Copper River & Northwestern Railway Co.

(Testimony of Herman Albright.)

Q. How long have you been in the employ of the Copper River & Northwestern Railway Co.?

A. About three years.

Q. You were in the employ then of the Copper River & Northwestern Railway Co. in the months of December, 1911, and January, 1912? A. Yes, sir.

Q. State to the jury whether you were on the train that left here about 11:45 on the 30th day of December, 1911. A. I was.

Q. What part of it were you on and what were you doing? A. I was firing the rotary.

Q. What rotary did you leave on?

A. On the X1 or X2.

Q. The big or little rotary? A. The big rotary.

Mr. COBB.—Is that X1 or X2?

Mr. BORYER.—X2. [254—204]

Q. Then you left on X2 or X1—which was it?

A. X2.

Q. The big rotary? A. Yes.

Q. I will ask you if anything happened to that rotary. A. Yes, sir.

Q. How far had you gotten with it?

A. About Mile 51 or 52, I should say.

Q. Do you know what it was that happened?

A. We blew out a cylinder-head.

Q. Then what did you do?

A. We came back to 49.

Q. Was any other rotary sent out for you?

A. Yes, sir.

Q. About what time did that get there?

A. I don't remember.

(Testimony of Herman Albright.)

Q. One did come to take the place of the one you started with? A. Yes, sir.

Q. What rotary was that? A. That was the X1.

Q. Now, who brought that rotary out, X1, if you remember? A. I don't remember.

Q. What became of the crew that came out on it?

A. They took this rotary that had broken back into Cordova.

Q. Tell the jury whether or not the same crew that left here at 11:45 on the 30th of December on X2 took rotary #X1. A. They did.

Q. They just changed crews?

A. They took the X1.

Q. The same crew that left here at 11:45 on X2?

A. Yes, sir. [255—205]

Q. Who composed that crew?

A. The rotary crew?

Q. Yes, the rotary crew.

A. Mr. Reed was the engineer, Kenneth Holden was pilot and I myself was firing.

Q. Now, do you recall what time you got back to 52? A. I don't recall.

Q. Do you recall what time you got to Miles Glacier. A. I don't remember.

Q. Do you remember what time you got to Bridge 75A, as it is called?

A. That was in the evening; yes, sir.

Q. Somewhere along about 9 o'clock—the evening of what day? A. The 31st of December.

Q. State, now, to the jury whether or not you and the crew had then been continuously at work, con-

(Testimony of Herman Albright.)

tinuously on duty, since you left here on the 30th.

A. State that again.

Q. Tell the jury whether or not when you reached this Bridge 75A you and the rest of the rotary crew had been continuously at work since you left Cordova the day before. A. Yes, sir.

Q. Had you or had you not? A. I had.

Q. Did you pass the bridge as you went up before you stopped at all there? A. Yes, sir.

Q. About how far beyond did you go?

A. Well, I don't know, but I should judge probably half a mile or three-quarters.

Q. Then what did you do—did you stop? [256—206] A. We stopped; yes, sir.

Q. Do you know why you stopped?

A. Well, we ran out of water and coal.

Q. State what efforts, if any, were made to get water there.

A. I don't remember just what efforts were made.

Q. You don't recall that? A. No, sir.

Q. What was your condition physically at that time with reference to being fresh or rested or otherwise? A. Well, I was very tired.

Q. Hungry? A. And hungry.

Q. Had you had anything to eat before that?

A. Yes.

Q. When had you had something to eat?

A. We stopped some time on the way up from 55.

Q. You don't recall the time? A. I do not.

Q. When you couldn't get water and your water

(Testimony of Herman Albright.)

ran out after you passed this bridge, what is the next thing you did?

A. I don't know just what they did.

Q. Do you remember backing back?

A. Yes, sir.

Q. Where to? A. To Bridge 75A.

Q. Do you know what they backed back for?

A. For water.

Q. Do you know whether they got water there or not? A. Yes, sir.

Q. About how long were they on the bridge while they were getting water?

A. I don't remember. [257—207]

Q. It takes some time to water an engine, siphoning it out of a creek? A. Probably an hour or so.

Q. What are the duties of a fireman in a general way, tell the jury.

A. His duties are to keep up sufficient steam and to keep water in the boiler.

Q. Anything else—does he pay any attention to the fires? A. Yes, sir.

Q. Does he pay any attention to the ashes?

A. Yes, sir.

Q. What does he do with reference to the fires and ashes—what are his duties regarding them?

A. He takes care of them.

Q. How does he take care of the ashes?

A. He sees that they are in their proper place.

Q. Now, I want you to tell the jury what kind of an ash-pan there was on that rotary.

(Testimony of Herman Albright.)

A. It was a hoe-pan—it hoed to one side, to the right side.

Q. Now, I want you to explain to them, so they will understand it as you do, how you have to clean that sort of a pan—what you do to get the ashes out of it.

A. Well, the pan is located underneath the grates, underneath the rotary. It is down pretty low and you have to get down pretty low to clean it; you clean it with a hoe—draw them out to one side.

Q. About where do they fall when they are pulled out with reference to the track?

A. Just about on top of the rail.

Q. The right-hand rail, the way the engine is headed, is it? [258—208] A. Yes, sir.

Q. Now, could you clean the ashes out of that sort of a pan anywhere except on a bridge or station on that trip? A. Yes, there were places—55.

Q. 55? A. Yes, sir.

Q. What was there there?

A. Well, the snow was cleaned off there so a person could get at the pan.

Q. That had been cleaned off? A. Yes, sir.

Q. For that purpose? A. Yes, sir.

Q. Among others? A. How is that?

Q. Cleaned off for that purpose?

A. Yes, as far as I know.

Q. Did you clean your pan there?

A. Yes, sir.

Q. Now, where the snow had not been cleaned off or you were not on a bridge, could you clean it?

(Testimony of Herman Albright.)

A. Well, not very well.

Q. Why?

A. Because of the frozen snow and ice.

Q. You mean banks on either side of the track?

A. Yes, the snow and frozen snow.

Q. I want you to describe them to the jury and how close it is to the rotary as the rotary plows through.

A. Well, it is almost up against the cab this bank, the cab of the rotary.

Q. When you got to this bridge, went back there and took water [259—209] did you clean your pan? A. Yes, sir.

Q. While they were taking water?

A. Yes, sir.

Q. Threw the ashes out—which side?

A. The right side.

Q. Were you careful at that time to see that there was no fire left in them? A. Yes, sir.

Q. How long had you been there before you cleaned out those ashes? A. I don't recall.

Q. Did you get orders from anyone?

A. No, sir.

Q. Did your engineer order you to do it?

A. No, sir.

Q. Did he see you doing it when you started in?

A. No, sir.

Q. Do you know whether he was aware of it before the train left? A. Yes.

Q. Did he say anything to you about it?

A. Yes.

(Testimony of Herman Albright.)

Q. What did he say?

A. He said, "Are you sure that the ashes are all off the bridge?"

Q. What did you tell him?

A. I told him they were.

Q. That was all that was said about it?

A. Yes, sir.

Q. About what time was that with reference to the time you left? [260—210]

A. I don't know exactly.

Q. I will ask you if you were sure that those ashes were out—what did you do to them?

A. Well, I shoved them off with the hoe.

Q. Off the track? A. Off the ties.

Q. Now, after that you backed back and got coal, did you, or do you recall that?

A. I don't know just when, or about getting coal.

Q. Do you recall when you got to Teikhell?

A. I don't know just what time it was.

Q. You got there at 5:45 in the morning. Did you go to sleep as soon as you got in there?

A. Yes, sir.

Q. Do you remember what time you were called to go back? A. It was somewhere around noon.

Q. You went back to your duties at that time?

A. Yes, sir.

Q. Do you remember when you reached this bridge again? A. Yes.

Q. What time was it?

A. Some time in the evening—probably 7 o'clock.

Q. Did anything happen then? A. Yes, sir.

(Testimony of Herman Albright.)

Q. Tell the jury just what it was, as near as you can recall.

A. Well, all I know about it was the rotary had gone off the bridge and fell, that was all.

Q. Which side?

A. I don't know which side. It was dark at the time.

Q. If it went off to the right side as it was headed this way [261—211] that was the opposite side from where your ashes were put over?

A. Yes, sir.

Q. You were caught in the wreck?

A. I was in the wreck; yes, sir.

Q. You didn't know anything when you were taken out? A. No.

Q. You were taken back to Chitina?

A. Yes, sir.

Q. I will ask you if your pan needed hoeing when you got to this bridge? A. It did.

Q. Had there been any opportunity to clean it any time since you left 55 before that?

A. Not that I can recall.

Q. There was no place prepared along the road?

A. No.

Mr. COBB.—That is all.

Cross-examination.

(By Mr. BORYER.)

Q. Did you stop at 67? A. Yes, sir.

Q. Did you take water at 67? A. Yes, sir.

Q. You stopped there about an hour and a half, did you not?

(Testimony of Herman Albright.)

A. I don't remember how long it was.

Q. You were there some time, were you?

A. Yes, sir.

Q. What is there at 67?

A. There is a siding, a passing track.

Q. Is there a water-tank there?

A. There used to be a tank, and is now. [262—

212]

Q. At that time?

A. But there isn't any water there.

Q. Was there water there at that time?

A. No, sir.

Q. What did you stop there about an hour and a half for?

A. We stopped on the bridge there to siphon the water.

Q. At 67? A. Baird River; yes.

Q. Did you siphon any water there? A. Yes.

Q. And you were there for about an hour and a half? A. As near as I can recall.

Q. Did you have your lunch with you?

A. No, sir.

Q. Had you taken any provisions with you?

A. Not on the rotary.

Q. You had nothing on there to eat?

A. No, sir.

Q. Was there a section-house at 67?

A. Not at that time.

Q. Where was your next section-house?

A. At 78.

Q. Was there a section-house at 55?

(Testimony of Herman Albright.)

A. Yes, sir.

Q. Did you eat at 55? A. Yes, sir.

Q. You didn't take any provisions from 55 then with you? A. Not on the rotary.

Q. Why didn't you take provisions with you?

A. Well, they always run from camp to camp.

Q. Were you expecting to get to the camp sooner?

[263—213] A. Yes.

Q. You expected to make the camp by the next meal-time, did you, the next meal hour?

A. Well, I hadn't any idea. I didn't know how long it would take.

Q. How long had you been running on that rotary?

A. I never run on the rotary.

Q. You were running on the rotary at that time?

A. I was firing the rotary.

Q. How long had you been firing that rotary?

A. About three weeks.

Q. Under whom? A. Mr. Reed.

Q. You had been working for Mr. Reed then for about three weeks? A. Yes, sir.

Q. You had made that trip repeatedly, had you?

A. I had made several trips; yes.

Q. Did you pass any section-house between 55 and Bridge 75A? A. No, sir.

Q. And you say you had been working for Mr. Reed about three weeks? A. Yes, sir.

Q. Was that your first rotary work?

A. Yes, sir.

Q. He was your instructor, was he?

A. Yes, sir.

(Testimony of Herman Albright.)

Q. Instructed you as to the rules, operation, etc., of the rotary? A. Well, yes, as far as I know.

Q. If you wanted to know something you would ask him, would you? A. Yes, sir. [264—214]

Q. He had charge of the rotary, did he?

A. Yes, sir.

Q. Now, where did you clean your fires?

A. Down at a snowbank.

Q. What snowbank?

A. Where we had stopped, about half a mile or three-quarters—

Q. Above Bridge 75A? A. Yes, sir.

Q. Was your pan full then?

A. I suppose it was.

Q. Did you look to see whether it was?

A. I couldn't get at the pan there.

Q. Did you know whether it was?

A. I knew, yes.

Q. You knew it was full, did you? A. Yes.

Q. Then you proceeded down to Bridge 75A? How long did you remain at that snowbank?

A. Well, I can't just recall how long we were there. Probably half an hour or somewhere along there.

Q. You were trying to take water from the other engine for awhile?

A. I don't know what they were doing.

Q. What were you doing?

A. I was cleaning the fire.

Q. Then you started back and down to Bridge 75A? A. Yes, sir.

(Testimony of Herman Albright.)

Q. And when you got to Bridge 75A you told Reed you were going to clean your fire, clean your pan, didn't you? A. Yes.

Q. And then you started to clean your pan, didn't you? [265—215] A. Shortly after; yes.

Q. You got down on the right-hand side—which side did you get on to clean your pan?

A. On the right side.

Q. On the right side headed as your rotary was headed? A. Yes, sir.

Q. Then which way was your rotary headed?

A. The rotary was headed towards Teikhell.

Q. Then that would be on the river side?

A. Yes, sir.

Q. Is that the same side that you were siphoning water from? A. Yes.

Q. Now, just how wide is your rotary as compared with the track?

A. The rotary is about eight feet wide.

Q. How wide is your track?

A. The ties are eight feet.

Q. The ties are eight feet? A. Yes, sir.

Q. Where did you stand when you cleaned your fires? A. When do you have reference to?

Q. When you were hoeing out your pan?

A. I was standing on a cap.

By the COURT.—A cap of the bridge?

A. A cap of the bridge, of the trestle.

Juryman HUNT.—A cap of the bent?

A. Of the bent; yes.

Q. Who gave the orders to have the rotary moved

(Testimony of Herman Albright.)

so that you could stand on that bent?

A. They just stopped so I could get right out on to the cap.

Q. They just happened to stop so you could step right off and [266—216] step on to the cap?

A. Yes, sir.

Q. You stopped your train with a view to stepping out at the side of that cap?

A. I didn't stop the train.

Q. Who did stop your train? A. I don't know.

Q. Who usually stops the train?

A. Well, it is the engineer on the pusher.

Q. Do you know if that was the object, to stop it there so you could step off on to this cap?

A. Not that I know of.

Q. You don't know. Now, then, you hoed your pan out there? A. Yes, sir.

Q. You had cleaned your fires before?

A. Yes, sir.

Q. It had clinkers in it, did it? A. A few, yes.

Q. And you threw those down with your pan?

A. No, sir.

Q. What did you do with them?

A. With the clinkers?

Q. Yes. A. I threw them out.

Q. Where is this you threw them out?

A. Down at that snow bank.

Q. Your ashes were then pulled at the point or place where the rotary derailed on its return trip?

A. Well, now, I can't say it was that place. I don't know.

(Testimony of Herman Albright.)

Q. You pulled your ashes on the north end of the bridge, didn't you? [267—217]

A. I don't remember it was the north end.

Q. Do you know what portion of the bridge it was?

A. All I know it was on top of the bridge.

Q. Do you want the jury to believe that the reason you pulled your pan there was because you were very hungry and tired? A. No, sir.

Q. That was not the reason you pulled your pan there? A. No, sir.

Q. You told Mr. Cobb you were very hungry and tired? A. Yes, sir.

Q. Then that hadn't anything to do with the cleaning of your fires or the putting out of your fires, had it? A. No, sir.

Q. Mr. Lee testified here that he heard a conversation between two persons regarding the cleaning of this fire or this pan on the rotary. Do you know if the conversation that he heard was the talk at the time you told Mr. Reed that you were going to clean your pan?

A. I didn't have a conversation with Mr. Reed.

Q. You told him you were going to clean your pan?

A. Yes, sir.

Q. I ask you if you know whether this conversation is the conversation that Mr. Lee heard, that he has reference to?

A. Well, I said I didn't have a conversation with Mr. Reed.

Q. Did you hear Mr. Lee's testimony?

A. Yes, sir.

(Testimony of Herman Albright.)

Q. Do you recall his testimony about a conversation that he heard from some one on the rotary?

Mr. COBB.—We object to that—he didn't say he heard it on the rotary. He said he heard it somewhere.

By the COURT.—He may answer. [268—218]

A. I don't know.

Q. Do you recall whether you heard that or not?

A. I don't know.

Q. Do you recall if you heard Mr. Lee make that statement? A. I heard it; yes.

(By the COURT.)

Q. How do you remember Mr. Lee's testimony? Repeat it as you remember he gave it in court about that matter.

A. I don't remember his testimony. I remember him saying that he heard a conversation.

Q. About what?

A. About something about cleaning a pan on the rotary.

Q. Which was it—cleaning fires or cleaning a pan?

A. Cleaning a pan.

(Continuation of Examination by Mr. BORYER.)

Q. Now, you state that you told Engineer Reed, who had charge of the rotary, that you were going to clean the pan?

A. I made that remark, yes.

Q. Do you know if that is the conversation that Mr. Lee has reference to? A. I don't know.

Q. You couldn't tell? A. No.

Q. Now, will you tell me again what Mr. Reed

(Testimony of Herman Albright.)

said to you regarding the cleaning of those ashes, that ash-pan?

A. He didn't hear me, I don't think, because he never answered me.

Q. Do you know if he heard you?

A. I can't say that.

Q. Tell me what he said to you about the cleaning of your pan. [269—219]

A. About the cleaning?

Q. Yes.

A. Well, when I had cleaned it he said to me, "Are you sure that the ashes are all off the bridge"?

Q. What did you tell him?

A. I advised him; yes.

Q. About what is the size of your pan on that rotary?

A. It is about 5 ft. long—about 4 ft. or about 3½ ft. wide and about 12 or 14 inches deep.

Q. About what quantity of ashes would that pan hold? A. Well, I can't tell.

Q. About how many bushels of ashes, would you say? A. I never figured it out.

Q. Have you some kind of an idea as to about what they would hold? A. I have not.

Q. You have no idea whatever? A. No, sir.

Q. Was it full? A. Yes, sir.

Q. And you hoed all of them out of the pan?

A. Yes, sir.

Q. And you say that in hoeing them out of the pan they would fall just about on the track, on the side that you hoed them out?

(Testimony of Herman Albright.)

A. I said they would fall right on the rail.

Q. Was that a solid bridge or not?

A. Solid? What do you mean by a solid bridge?

Q. I mean, is it decked over the top?

A. Well, there is ties; there is stringers,—there is caps and [270—220] there are stringers on the caps and ties on the caps and the rails on the ties.

Q. Do you know about what distance the ties are apart?

A. Well, I should judge about 5 inches.

Q. About five inches apart?

A. Five or six inches.

Q. These stringers rest upon what?

A. On the caps.

Q. What do the caps rest upon?

A. On the piles.

Q. About how high is that bridge from the ice?

A. Probably eight feet, such a matter.

Q. Now, then, if you cleaned your pan, all the ashes out of your pan, and were pulling your ashes over this rail, do you think that the rail and the ties where you pulled it out would catch all of the ashes?

A. They fell, the ashes fell through the bridge.

Q. Through the opening of the ties?

A. Yes, between the ties, through the bridge.

Q. And some of them would lodge on the stringer and on the cap, would they not? A. Yes, sir.

Q. And some would go on down along the piling, would they not? A. Yes, sir.

Q. Where was Mr. Reed when he said this to you?

(Testimony of Herman Albright.)

A. He was standing in the pilot-house, right at the door.

Q. Where were you standing?

A. I was standing on a cap.

Q. He was looking at you, was he?

A. Yes, sir.

Q. Could see you and could see what you were doing? [271—221] A. Yes, sir.

Q. You still had your hoe in your hand, did you?

A. Yes, sir.

Q. After this conversation how did you get on to your engine, on your rotary?

A. I went up through the pilot-house door.

Q. You stepped up off this cap?

A. I crawled up along the side on the bridge to the pilot-house door.

Q. You crawled along the side—backwards or forwards? A. Forwards.

Q. Crawled on up then towards the head of the engine? A. Yes, sir.

Q. On the ties that protrude out over the track?

A. Yes, sir.

Q. When you got up in the pilot-house, how long was it before you left there?

A. I don't remember.

Q. About how long? A. I couldn't recall.

Q. What did you do when you got up there?

A. In the pilot-house?

Q. Yes.

A. I went back in where the tank was.

Q. What did you do there? A. Put in the fire.

(Testimony of Herman Albright.)

Q. Did you stay in there then until you left?

A. Yes, sir.

Q. Didn't go out again? A. No, sir.

Q. Are you certain of that? [272—222]

A. Yes, sir.

Q. Did Reed get off of the engine?

A. Not that I know of.

Q. Do you know if he was down on the cap?

A. I never seen him there.

Q. Then did you use the hose while you were there? A. We had no hose.

Q. Just before you got on the rotary, do I understand you took what ashes was on the track and was on the ties and pushed it off? A. Yes, sir.

Q. Which way did you push them?

A. Just so they would fall off from the ties, so they would drop down on to the ice and snow.

Q. What is the width between the rails?

A. I never measured it.

Q. About what? A. About 7 feet—I mean 6 ft.

Q. Between the rails? A. About that.

Q. I mean between the ties?

A. About that; yes, sir.

Q. I said between the ties—I mean between the rails. A. The space in between the—

Q. Rails, where the wheels of your rotary run on?

A. That is probably 5 ft.

Q. Not quite 5 ft., is it? About 4—8½, is it not?

A. I don't know. I am just judging it is about 5 ft.

Q. Where did you stand when you pushed these

(Testimony of Herman Albright.)

ashes off of the ties?

A. I was standing on the cap and on the bridge.
[273—223]

Q. Did they fall—some fall on the side of the rail and some fall on the outside of the rail, or would they fall on the inside of the rail?

A. Fall on both sides of the rail.

Q. Then the ashes that were on the inside of the rail you would take your hoe and push over toward the other rail, would you?

A. I pushed them to one side, so they would fall in between the ties on to the snow and ice.

Q. And fall down below? A. Yes, sir.

Q. Did you throw any water on your ashes?

A. No, sir.

Q. Just left them there as you pushed them off?

A. Yes, sir.

Q. Now, then, I will ask you if you did not state that the reason that you cleaned your pan there was in order to save time?

Mr. COBB.—We object to that until he states the time and place and persons to whom he stated it.

Objection sustained.

Q. I will ask you if you did not, in the month of February, 1912, tell me and make oath to the fact that the reason you cleaned your pan there was in order to save time?

A. That was one of the reasons.

Q. I will ask you if when you were called by Mr. Geiger, when he was investigating this matter in February, if you did not tell Mr. Geiger that that was

(Testimony of Herman Albright.)

the reason that you had cleaned your pan there?

A. That was one of the reasons.

Q. In order to save time? [274—224]

A. Yes, sir.

Q. Now, you say Mr. Reed said to you—what did you say Reed said to you regarding that?

A. I said that he had said, “Are you sure that you have cleaned all the ashes off of the bridge?”

Q. He didn’t ask you whether you had been careful to see that the ashes did not lodge down on the stringers and at the bottom of the piling?

A. No, this was the only conversation that I had with Mr. Reed regarding the pan.

Q. He didn’t get out to see if you had done it?

A. Not that I know of.

Q. Do you know why he asked you if you were certain that you had cleaned it off the bridge?

A. Well, I suppose to make it safe.

Q. Is it dangerous to clean a pan on a bridge?

A. Yes, sir.

Q. You say that Holden was pilot?

A. Yes, sir.

Q. Mr. Reed had charge of the engine?

A. Yes, sir.

Q. And control over the engine, the rotary?

A. Yes, sir.

Q. Now, I will ask you—you were there at the time these fires were cleaned there? A. What fires?

Q. When you cleaned your pans there at 75A?

A. I said I didn’t clean any fires.

Q. Well, you were there after the bridge had

(Testimony of Herman Albright.)

burned and the rotary fallen through, were you?

A. Yes, sir. [275—225]

Q. When were you next there?

A. Well, it was the time I came from the hospital, from Chitina to Cordova.

Q. You went from bridge 75A the night of the accident and you were taken to Chitina, were you?

A. Yes, sir.

Q. And how long did you remain in Chitina?

A. About 21 days.

Q. And then you came down to this bridge, did you? A. Came by it; yes.

Q. Now, I will ask you if you did not tell Mr. Geiger at the time of this investigation that that was the reason that that bridge had burned?

Mr. COBB.—We object to that. He should give the time and place and those present.

Objection sustained.

Q. I will ask you if you had a conversation with Mr. Geiger, who was then superintendent of the railroad, during the month of February or January, regarding this accident at Bridge 75A?

Mr. COBB.—Where was the conversation.

Mr. BORYER.—In Mr. Geiger's office.

A. I don't recall.

Q. Don't you recall having a conversation with Mr. Greiger concerning the investigation of this matter? A. Oh, yes, I recall that.

Q. I will ask you if you did not tell Mr. Geiger that in your opinion that accident was caused by reason of the fact that you had cleaned your pan

(Testimony of Herman Albright.)

there that night? A. Well, I didn't know.

Q. Didn't you tell him that. [276—226]

Mr. COBB.—I shall object to that as not contradictory to anything he has testified to here, and his opinion at that time or now would not be of any particular weight.

By the COURT.—I have no objection to it going to the jury for what it is worth.

Mr. COBB.—I haven't either, if the Court thinks it is worth anything.

By the COURT.—He may answer.

Last question read by reporter as follows:

Q. Didn't you tell him that?

A. I think I did.

Q. I will ask you if you did not also tell him at that same time—I don't see any other way it could have started, this bridge being covered with snow and ice there was no other way for it to start except by this fire?

Mr. COBB.—We object. If he has his sworn statement that this witness has signed, it ought to be shown to him and he ought to be allowed to read it.

By the COURT.—He may have the benefit of reading it if he wishes to, if he doesn't remember the question.

Mr. COBB.—Mr. Boryer is manifestly reading from his statement in writing, and if the statement is in writing, I insist that the witness be first shown the statement that he has made in writing.

By the COURT.—If the witness doesn't remember

(Testimony of Herman Albright.)

the question, he may refer to it. Do you recall the question? A. I think I did.

By the COURT.—Can you answer it?

A. I said I think I did.

By the COURT.—You think you did say so?

A. Yes, sir. [277—227]

Q. Now, then, is it not a fact that the reason that you did not use any water to put this fire out is because you thought that the fire and ashes were all off of the ties? A. Yes, sir.

Q. And you did not look to see if it was above or had fallen down along the piling—you couldn't see down there, could you, standing on the caps?

A. I could see; yes.

Q. How would you be able to see on the other side of the piling if you were standing out on a cap?

A. By moving to one side and then to the other.

Mr. BORYER.—That is all.

(By Mr. COBB.)

Q. How long were you in the hospital?

A. About 21 days.

Q. And you were brought down here some time in January? A. Yes, sir.

Q. Do you remember what date?

A. I don't remember what date.

Q. How soon after this was it before they had you up there at Geiger's office taking this statement? A. It wasn't long after that.

Q. At that time you hadn't been back up the road?

A. No, sir.

Q. You didn't know that only one side of the

(Testimony of Herman Albright.)

bridge was burned at that time, did you?

A. I did not; no.

Q. You didn't know it was the side opposite from where you pulled your ashes at that time that was burned? A. No, sir, I didn't know. [278—228]

Q. I understand you to say they had no hose on that rotary? A. That is what I said.

(By Mr. BORYER.)

Q. Were they siphoning water at the time?

A. What time?

Q. When you finished cleaning your pan?

A. I think they were; yes.

Q. They were still siphoning water?

A. Yes, sir.

Q. And how far was this water from this cap?

A. The water? I can't tell—you mean how far down from the cap?

Q. No, how far from the hole?

A. Probably, say, 20 or 30 ft.—say, about 30 ft.

Q. The creek was all frozen over except at the place where they were siphoning this water?

A. It was frozen over; yes.

Q. Except at that place?

A. They made a place, as I understood.

Q. They made a place to get this water out?

A. Yes, sir.

Q. You could walk around on the ice under the bridge, could you? A. I didn't walk around.

Q. It was covered with snow, was it?

A. Yes, sir.

Q. And the creek was all frozen over?

(Testimony of Herman Albright.)

A. Yes, sir.

Q. About how deep was the ice?

A. I don't know.

Q. Have you any idea?

A. I have not. [279—229]

Q. The men were walking around on the ice, were they? A. Well, I don't know.

Q. Did you see any men down there siphoning water? A. Yes, I saw them.

Q. Did you see any other men around?

A. They were the only men I saw.

Q. They were walking around down on the snow and the ice? A. Yes, sir.

Mr. BORYER.—That is all.

Witness excused. [280—230]

[**Testimony of Frank R. Townsend, for Plaintiff.**]

FRANK R. TOWNSEND, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name?

A. Frank R. Townsend.

Q. Where do you reside now? A. Cordova.

Q. What is your occupation?

A. Locomotive engineer.

Q. Were you ever in the employ of the Copper River & Northwestern Railway Company?

A. I am—I have been.

Q. At the present time are you? A. I am.

Q. How long have you been in their employ?

A. Including the Katalla Company, which is the

(Testimony of Frank R. Townsend.)

same company, I think, since June, 1907.

Q. You were in the employ, then, of the Copper River & Northwestern Railway Co. in December, 1911, and January, 1912? A. Yes, sir.

Q. Now, do you recall the trip going up the road, leaving here on the 30th of December, 1911?

A. I do.

Q. Did you go on that trip? A. Yes, sir.

Q. In what capacity?

A. As engineer on Engine #102, pulling the local.

Q. Do you recall what time you got out of here?

A. I do not.

Q. Can you now state what time you got out?

A. I cannot, except by hearing from the train-sheet. [281—231]

Q. That train got out of here, I believe, at 11:45, according to the train-sheets, and your train left at one P. M.—do you recall where you broke the rotary?

A. I do not.

Q. You did break it somewhere? A. Yes, sir.

Q. Was it before you reached Mile 52?

A. Yes—I couldn't say exactly. I know we were behind them and caught up with them at 51—that is where they commenced to pound the snow, I think.

Q. Was there anything that delayed the train there? A. The rotary broke down there.

Q. What was done then? A. I couldn't say.

Q. Do you know whether another rotary came out or not? A. Not there.

Q. Where did one come out?

A. We changed rotaries at Miles Glacier.

(Testimony of Frank R. Townsend.)

Q. That was after you backed down to Miles Glacier another came out?

A. We backed to 39, I think.

Q. When the other rotary came out—do you remember when you got to Bridge 75A?

A. I remember when they stopped north of 75A on account of the rotary running out of water.

Q. Tell the jury all you remember about that—stopping and the getting of the water and coaling up, etc.

A. I don't know very much about it, only I was on the local following the rotary and I got a signal to back up our train so as to give the rotary crew a chance to get back [282—232] on the bridge to get some water—they didn't have enough water to run to the water-tank, about two miles away. I backed clear of Bridge 75A and that gave the rotary a chance to take some water there, and while we were stopped there we threw some coal off of our train to be used on the rotary.

Q. Did the rotary back up and get this coal?

A. They did.

Q. Then did they pull out? A. They did.

Q. How far ahead of your train, the local of which you were engineer, was the rotary when you crossed this bridge? A. Going north the first time?

Q. No, the second time—how much ahead did it go?

A. Very little. We followed them very close through that section usually.

Q. Why?

A. Well, in case of storms the track would drift

(Testimony of Frank R. Townsend.)

over again, so we had to keep very close to them.

Q. Crossing this bridge the second time, I suppose you didn't notice any signs of fire on it?

A. No, sir.

Q. How long have you been a locomotive engineer?

A. I was promoted in 1895.

Q. I will ask you, from your experience as an engineer on railroads, if it is a very common or uncommon thing for bridges to be fired by engines passing over them?

Mr. BORYER.—We object to that question as incompetent, irrelevant and immaterial, and not pertinent to the issues in this case. [283—233]

Objection overruled. Defendant allowed an exception.

A. There was a time when they were all wooden bridges; it wasn't uncommon at all.

Q. Do you know what time it was that you got to Teikhell on the way up?

A. I don't remember the time.

Q. The train-sheet shows it to be 5:45 in the morning and you started back from there that afternoon. Did you return, leaving there on January first, from Teikhell? A. Yes, sir.

Q. You were still on the local? A. Yes, sir.

Q. How far behind the rotary were you when it reached this bridge, 75A, on the return?

A. The time we reached 75A on the return I was coupled into their caboose.

Q. All coupled in together? A. Yes, sir.

Q. Did you see the rotary go over? A. No, sir.

(Testimony of Frank R. Townsend.)

Q. What was the first thing that called your attention to it? A. The sudden stop.

Q. What did you do then?

A. Opened the window and jumped out in the snow and I could see the rotary lying there.

Q. Did you go to it? A. Yes, sir.

Q. Go ahead and describe to the jury what you saw there or did as near as you can recall it.

A. Well, the rotary was lying on its right side, the front of [284—234] the rotary, known as the hood, being lowest, the tank lying on the embankment or the edge of the bridge. And the first person I saw was Mr. Wilson. He was in between the rotary and the tank working at Albright, who was buried—he was the fireman. He was buried up in the coal and I tried to assist him some, but there wasn't room for two of us to work there, and I asked him if he had seen anything of the rest of the boys and he said, "No," he was busy, had all he could do there—something to that effect. I stepped back and they were coming out with Holden about that time. They got him out of the pilot-house and I helped take him back to the coach. Then I returned to the rotary and they were still working on Albright and had the covers off the tank and were removing the coal out of the tank to get at him. I again inquired if they had seen anything of Reed—there didn't seem to be anybody that seen or heard anything of him—but we commenced looking for him then and I think Mr. Scott was the first one to get an ax—either him or the roadmaster. He

(Testimony of Frank R. Townsend.)

chopped a hole through the roof of the rotary—lying on the side we couldn't get to the position where he would be standing, only by going through the roof. We chopped a hole in there and there was quite a little difficulty in doing that on account of the iron brads in there and one thing and another, and they felt around until they got hold of his hand—supposed to be.

Q. There couldn't be anybody else in there except him?

A. At the time we were there, the watchman—nobody had seen him up to that time.

Q. He turned up later?

A. Yes, sir. [285—235]

Q. About how long were you there at this place?

A. I couldn't say. Possibly an hour. The pony truck leading the engine pushing the rotary was off the track, and I know we held a sort of consultation there among the engineers and conductors in regard to devising some means of getting Reed's body out from under there, but we could see no possible way of getting him out—that was the first thing considered.

Q. And you didn't get him out at that time?

A. No, sir.

Q. Do you know how long it was before they got him out?

Mr. BORYER.—We object to that as incompetent, irrelevant and immaterial.

Objection overruled.

Q. When were you back there the next time?

(Testimony of Frank R. Townsend.)

A. I couldn't give the date—after the road was opened up there. About the first train out of Chittina coming south.

Q. When you went around there to the front **this** time did you notice how much of the bridge was burned? A. No, sir, I did not.

Q. Or which side of it was burned?

A. I did not.

Q. In your experience as a locomotive engineer, does the engineer have control of all the movements of his fireman with reference to cleaning his ash pans, pulling his fires, etc.? A. No, sir.

Q. Do you know anything about a rotary engine, running a rotary snowplow? A. Yes, sir.

Q. Have you ever been in one? [236—236]

A. Yes, sir.

Q. Have you worked with it? A. Yes, sir.

Q. What chance for control over the movements of a fireman has the engineer in one of those things?

A. In regard to the way he fires it?

Q. Yes.

A. He can't attend to his fire at all. He can't watch him—don't see him for hours at a time, frequently. He might step in behind him to put on an injector but he wouldn't see him.

Q. How about with reference to cleaning his pans?

A. I never paid much attention to the fireman, about cleaning their pans.

Q. That is their business?

A. If I have an experienced fireman.

Q. I hand you Plaintiff's Exhibit "C" and ask

(Testimony of Frank R. Townsend.)

you to explain to the jury from that cut, illustrate to them, where the—first, who compose the crew of a rotary when it is at work?

A. Usually it consists of a pilot, an engineer and a fireman.

Q. Where does the pilot stay?

A. He stays in the front part of the rotary.

Q. Where does the engineer stay?

A. Along the side of the boiler where he has a throttle and a reverse lever there, about midway between the pilot-house and the rear end of the boiler—probably about halfway out of this door in here (indicating).

Q. How does he communicate with the pilot?

A. It is not necessary for him to communicate with the pilot, that I know of. [287—237]

Q. Can he communicate with him without going forward to the pilot-house? A. No, sir.

Q. Can the engineer see forward at all?

A. See the track?

Q. Yes. A. No, he can't see the track.

Q. Where does the fireman stay?

A. He stays to the rear of what is known as the rotary, rear of the boiler—at this edge of the tank. Probably he would stand on the tank.

Q. I want you to explain the interior of that rotary—where the fireman stays and the engineer stays and the other man stays—what sort of compartments they are, so the jury will have an idea what the inside of that think looks like.

A. There is a large boiler occupies most of this

(Testimony of Frank R. Townsend.)

space in here, the same as a locomotive boiler, which is housed there to keep the snow off of it, and the engines that operate the wheel are situated about the front end of the boiler, two cylinders, and it just leaves a little narrow passage between the outside of the rotary cab and the boiler, in there, and there is a platform on there so you can walk back and forth—you can come from the pilot-house back to the rear where the fireman is—back and forth through there.

Q. That is where the engineer stays, alongside there? A. Yes, sir.

Q. And the fireman stays back of the cab where he can fire the engine? A. Yes, sir. [288—238]

Q. Did you know J. E. Reed in his lifetime?

A. Yes, sir.

Q. How long did you know him?

A. I should judge about three years.

Q. Did you work with him? A. Yes, sir.

Q. Were you well acquainted with him?

A. Yes, sir.

Q. What sort of a man was John E. Reed?

A. As an engine-man?

Q. Both as an engine-man and as a man?

A. I considered him a first-class engine-man.

Q. What was his character as a man, in the community?

A. Sober, industrious, hard-working—a man that was well liked.

Q. A young man? Do you know his age?

A. I do not.

(Testimony of Frank R. Townsend.)

Q. About what would you judge his age to be?

A. I think he was about thirty years old.

Q. Good health? A. Yes, sir.

Mr. COBB.—That is all.

Cross-examination.

(By Mr. BORYER.)

Q. Are you working at the present time?

A. I have a leave of absence.

Q. You say that Reed was a competent, qualified engineer? A. Yes, sir.

Q. And attended to his duties? A. Thoroughly.

Q. Complied with all the requirements of the company? [289—239]

A. I couldn't say as to that.

Q. To the best of your knowledge? A. Yes, sir.

Q. A man who followed instructions?

A. Yes, sir.

Q. And kept himself posted as to instructions?

A. Yes, sir.

Q. And as to time tables, bulletins, etc.?

A. Yes, sir.

Q. Did you ever work on any road besides this road? A. Yes, sir.

Q. What road?

A. I worked on several; I worked on the Union Pacific.

Q. How long? A. Two years and nine months.

Q. Any other road?

A. I worked on the Burlington.

Q. How long? A. About one year.

(Testimony of Frank R. Townsend.)

Q. Any other road?

A. O. R. & N., three or four months, I guess. From there I went to the Great Northern and worked on that. I couldn't say exactly how long—six or seven years.

Q. I will ask you if you recall Rule 497A, which provides that engineers will be held responsible for the fireman's conduct and must report any inefficiency or neglect to the master mechanic.

A. What road is that on?

Q. The Great Northern.

A. I do not—what is the date? [290—240]

Q. It is Rule Book #3444—I couldn't tell you the date.

A. I don't recall it. It might have been in effect when I was there.

Q. You keep yourself posted as to rules?

A. Not on foreign roads.

Q. While you were on that road? A. Yes, sir.

Q. Was that rule book in effect at the time you worked on that road? (Handing witness book.)

A. I couldn't say. I wasn't working there at that time. I left there in 1897 I think it was.

Q. Who is responsible for the engine?

A. Well, I couldn't say who is responsible for it.

Q. When you take an engine out of here, don't you know who is responsible for that engine?

A. I know I am not.

Q. Who is?

A. I couldn't say who is responsible for it.

Q. Who is responsible for the operation of that

(Testimony of Frank R. Townsend.)

engine? A. The engine is in my charge.

Q. It is placed in your charge? A. Yes, sir.

Q. What do you mean by saying you are not responsible for the engine?

A. If I was responsible for it, as I take the meaning of it, I would be liable for any damage to it.

Q. Aren't you? A. No, sir.

Q. When you take an engine out of here aren't you required to know the condition of that engine?

[291—241] A. Yes, sir.

Q. And when you bring it back aren't you required to report the condition of that engine? A. Yes, sir.

Q. If you break a wheel on that engine, aren't you responsible for it?

A. I hardly think so—I don't think I am.

Q. And you are not responsible for the manner in which you run that engine? A. Yes, sir.

Q. You have charge of running the engine, do you?

A. Yes, sir.

Mr. BORYER.—That is all.

(By Juror PEDERSEN.)

Q. I wish you would please explain to the jury what are the specific duties of the engineer of the snowplow.

A. Well, he has charge really of the snow-plow. He has to take signals, you might say instructions, from the pilot. The pilot has got to be the eyes for the engineer—he can't see. He is back there where he is all by himself. As someone expressed it here in the trial, he is a good deal like an engineer on a vessel, and the pilot has to be in front there—he

(Testimony of Frank R. Townsend.)

has to look out to give the signals to the engineer how to run the wheels.

Q. Then, do I understand that the engineer's duties on the snowplow consist of the care and operation of the machinery that operates the wheel that throws the snow? A. Yes, sir.

Q. His duties are limited to that? A. Yes, sir.
[291½—242]

(By Mr. BORYER.)

Q. As to speed, etc.?

A. That is a good deal from the pilot. He gets signals from the pilot as to how fast to run the wheel, that is, because of the condition of the snow in front. If it is a light snow in front he will call for more steam. If there is heavy snow in front he would signal the engineer of the rotary to turn the wheel faster so the wheel wouldn't become stalled when entering this heavy snow.

Q. What is the duty of the pilot?

A. He has to watch out and convey the signals to the engineer, also to the engines, the locomotives pushing the rotary—they are a good deal the same as—

Q. He is a sentinel? A. Yes, sir.

(By Mr. COBB.)

Q. When you left here on the 30th day of December, 1911, had you been up the road at any time that month prior to that date? A. Yes, sir.

Q. How many times as you recall?

A. I couldn't recall the number of trips. I know we had one trip, just the trip previous to that—I

(Testimony of Frank R. Townsend.)

think I worked the whole month.

Q. In any of these trips just prior to that had you been out over sixteen or twenty-four hours on the run to Teikhell?

A. I couldn't recall now except in looking over an old slip-book I found the trip previous to that we were out more than that. [292—243]

Q. The trip just previous? A. Yes, sir.

Q. You all knew pretty well when you left here that you had no reasonable expectation of getting up there much under twenty-four hours, didn't you?

A. Well, I didn't know the condition of the road up above 51 where we broke down—I couldn't tell. There was heavy snow where we turned back—we broke the rotary down and turned back. I couldn't tell how far that snow extended.

Q. On the trip before that it had taken you considerably over twenty-four hours?

A. I don't recollect the trip before that. This was the trip we broke down, leaving on the 28th, I had reference to.

Q. Prior to that time?

A. I don't remember how long we were on the road.

Q. Do those slips you refer to indicate?

A. They probably would.

Q. Have you them with you? A. No, sir.

Mr. COBB.—That will be all.

(By Mr. BORYER.)

Q. Is it not a fact that one trip may take you three days or four days to make it and the trip following,

(Testimony of Frank R. Townsend.)

you will make the same trip in eight to ten hours?

A. Yes, sir.

(By Mr. COBB.)

Q. And along that time of the year you may expect 24 to 30 hour trips any time, to Teikhell?

A. You can expect it; yes, sir.

(By Mr. BORYER.)

Q. Do you frequently have trips that you go [293—244] down at that time of the year in eight or ten hours? A. Yes, sir.

Q. (By Mr. COBB.) Coming down is always quicker than going up?

A. Not always,—usually.

Witness excused.

Mr. COBB.—I will call Mrs. Reed.

[Testimony of Esther A. Reed, in Her Own Behalf.]

ESTHER A. REED, the plaintiff, called and sworn as a witness in her own behalf, testified as follows:

Direct Examination.

(By Mr. COBB.)

Q. What is your name? A. Esther A. Reed.

Q. What relation were you to John E. Reed in his lifetime? A. Wife.

Q. Have you any children? A. Yes, sir; two.

Q. What are their names and ages?

A. Verne Reed is eight years old now and Kenneth is three.

Q. You are the plaintiff in this case?

A. Yes, sir.

(Testimony of Esther A. Reed.)

Q. The same Esther A. Reed who was appointed administratrix of the estate of John E. Reed?

A. Yes, sir, I am.

Q. How long had you been married to Mr. Reed?

A. At the time of the accident?

Q. Yes. [294—245] A. Eight years.

Q. You remember his leaving here on the 30th?

A. Yes, sir.

Q. Was that the last time you saw him?

A. It was.

Q. What was his age?

A. He was 31 years old.

Q. Were Mr. Reed and yourself happy in the marriage relation? A. Very happy.

Q. When did you first hear of his death?

A. About 11 o'clock on the night of the first of January.

Q. Do you remember how you heard it?

A. Yes, sir.

Q. How was it?

A. I was in my own home—I was told by a friend of mine.

Q. Did you ever see the body afterwards?

A. Not until I had got to Bozeman, Montana.

Q. When did you leave for Bozeman?

A. I left here, I think it was, the 16th of January—15th or 16th.

Q. After you took out the administration papers?

A. Yes, sir.

Q. That was to get the money in Seattle that was on deposit in the bank there?

(Testimony of Esther A. Reed.)

A. That was why I took my letters out here.

Q. Then you left here shortly after that, after you took out the letters, which was on the 17th?

A. I don't remember the date, but it was some time after I took out the letters.

Q. Why didn't you see it here—hadn't they brought it here at that time? [295—246]

A. I don't think so.

Q. How long were you in Seattle before you received the casket? A. About a week, I think.

Q. Did you take it back then to Bozeman, Montana, for interment? A. Yes, sir.

Q. Did you pay all the expenses of that trip?

A. Yes, sir.

Mr. COBB.—That is all.

Cross-examination.

(By Mr. BORYER.)

Q. You say you paid all the expenses of that trip—do you mean from Seattle into Montana?

A. With the exception of one fare from here to Seattle.

Q. The expenses, the funeral expenses here, and the fare of Mr. Reed's brother, was paid from here to Seattle?

A. I don't know, I wasn't here—I didn't pay those.

Q. All of the funeral expenses here were paid, were they not?

A. I suppose they were—I don't know what the expenses were here.

Q. You never received any bill for the casket or

(Testimony of Esther A. Reed.)

clothing or anything? A. No, sir.

Q. Do you recall meeting me in Seattle?

A. I do.

Q. Do you recall if Mr. Reed's brother was in Seattle?

A. He was; that is the brother that is working here for the company now—he came down with the body.

Q. That is the brother that is working here now?

A. Yes, sir. [296—247]

Q. Do you remember me offering to render assistance there on behalf of the company, any and all assistance?

A. After my expenses and affairs were all ready and I was ready for the trip east I remember that; yes.

Q. Do you recall you came in on one boat and I located you the next day, was it not?

A. It was not.

Q. What day was it?

A. It was the day—I was to leave in the morning, going east—it was that evening, that afternoon.

Q. That was a day or two before the remains came to Seattle, was it?

A. It was the afternoon, and the remains came the next morning some time, early.

Q. I had been out to see you and you were out somewhere—I had to wait or come back?

A. I was in Seattle when you came out that afternoon.

Q. And you were not at home at that time?

(Testimony of Esther A. Reed.)

A. No, I came while you were there.

Q. And I took the matter up with you at that time?

A. You asked me if everything was all ready, and I said I had made my preparations to go east.

Q. Your husband was 31 years old?

A. He was.

Q. Was he older than his brother that is working here at the present time? A. Yes, sir.

(By Mr. COBB.)

Q. Do you know what Mr. Reed was earning and had been for some time? [297—248]

A. \$250 a month, I think, or more.

Q. He had some extra time?

A. Yes, he often had \$300 a month.

Q. It was always as much as \$250? A. Yes, sir.

(By Mr. BORYER.)

Q. What proportion of that did he give you?

A. I had all of it.

Q. He turned it all over to you? A. He did.

Q. For you to use or to keep for him?

A. To keep—to use what was necessary for our expenses.

Q. About how much would you use per month?

Mr. COBB.—I don't think that is a fair question, and is not material.

The WITNESS.—It is according to where we were living.

By the COURT.—What is the purpose of the question?

Mr. BORYER.—The purpose is to show what por-

(Testimony of Esther A. Reed.)

tion of his salary was used in the household expenses and given to her.

By the COURT.—I don't see that that would have anything to do with the elements of damages that would be necessary if any are considered by the jury, as I understand the law—unless you can call to my attention something I have overlooked.

Mr. BORYER.—That is a point I want to reserve in the case.

By the COURT.—You may reserve it—exception allowed.

Mr. COBB.—I have agreed with Mr. Boryer that to obviate the necessity of calling the life insurance agent, we may read into the record from the tables of life insurance of the Equitable Life Assurance Society of New York, the life [298—249] expectancy of a man 31 years of age.

Mr. BORYER.—That is correct.

Mr. COBB.—The life expectancy of a man 31 years old is 34.6 years.

Juror PEDERSEN.—I would like to ask if the expectation of life in that case is affected by one's vocation?

By the COURT.—That may be a matter that I will have to instruct you on later.

Plaintiff rests.

WHEREUPON Court adjourned until to-morrow (Saturday) morning at 9 o'clock. [299—250]

[Testimony—Defense.]

[Testimony of R. J. De Leo, for Defendant.]

Saturday, May 3, 1913.

MORNING SESSION.

R. J. DE LEO, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. BORYER.)

Q. What is your name? A. R. J. De Leo.

Q. By whom are you employed at present?

A. Copper River & Northwestern Railway Co.

Q. By whom were you employed in December, 1911? A. By the same company.

Q. And have been in the employ of the same company ever since? A. Yes, sir.

Q. I will ask you if you had a time-table in effect at that time? A. Yes, sir.

Q. Is this same time-table in effect at present?

A. Yes, sir; it is.

Q. And was and has been ever since the first day of December, 1911?

A. It was in effect as of the date shown in the time-table.

Q. What is the date shown in the time-table?

A. October 16, 1910.

Q. I will ask you if all trainmen, including firemen and engineers, are required to be familiar with the time-table.

A. They are required to have a current time-table in their possession.

Q. What is your position?

(Testimony of R. J. De Leo.)

A. Chief clerk to the superintendent. [300—251]

Q. What was your position in December, 1911, and January, 1912? A. The same.

Q. I will ask you who was superintendent at that time. A. George Geiger.

Q. I will ask you if George Geiger is in the employ of the Copper River & Northwestern Railway Co. at the present time. A. No, sir.

Q. I will ask you where is now, if you know?

A. I don't know.

Mr. BORYER.—We desire to have this time-table admitted as an exhibit.

It is admitted, without objection, marked Defendant's Exhibit "2."

Q. I will ask you if this time-table, which I have handed you and which has been marked Defendant's Exhibit 2, provides any rules or has any references to any rules.

A. The time-table is used by the railroad. It contains a schedule of the regular trains, covering their movements and the movements of the trains are subject to the rules. This also gives you the distances between the various points beginning at Cordova and ending at Chitina. You will notice the miles are designated beginning at Cordova and coming back the same way on this side.

Q. This time-table says, "Bulletin Books are located in the Dispatcher's office, Cordova, and at Chitina." I will ask you if you have and had at the time of this accident a Bulletin Book in the office at Cordova. A. Yes, sir; we had.

(Testimony of R. J. De Leo.)

Q. I will ask you if this bulletin, which is a copy taken from the book that was here yesterday, and reading:

“Cordova, Alaska, July 16, 1910. [301—252]

To All Engineers, Firemen, Hostlers and all Concerned:

Do not fail to extinguish *ALL* fire in ashes removed from ash pans. No excuse will be taken for the burning of ties, or other damage to property, as a result of a failure to do this. Engineers will be held equally responsible with their firemen in this matter.

(Signed) J. R. VAN CLEVE,
Superintendent.”

I will ask you if that bulletin was in the bulletin-book referred to in the time-table during the month of December, 1911, and the month of January, 1912?

A. Have you the bulletin-book here?

Q. Yes. I hand you the bulletin-book and ask you if that is an exact copy of the bulletin and rule contained in the bulletin-book.

A. Yes, sir; it is an exact copy of the bulletin that is in the book.

Q. I will ask you if you know when you were placed under the Interstate Commerce Commission.

A. September 1, 1912.

Q. I will ask you if you know that until that time the Interstate Commerce Commission would not take this under their jurisdiction, do you or do you not?

A. I do not know.

Q. I will ask you if you know of your own knowledge that the Secretary of the Interior refused to

(Testimony of R. J. De Leo.)

take us under the jurisdiction, to take the railroad under the jurisdiction? A. I don't know.

Q. I will ask you who had charge here prior to the time that Mr. Geiger took charge?

A. You mean the superintendent? [302—253]

Q. Yes.

A. Mr. Van Cleve was the superintendent—J. R. Van Cleve.

Q. Who was general manager?

A. E. C. Hawkins.

Q. I will ask you if Mr. Hawkins is not dead.

A. Yes, he is.

Q. I will ask you if you know where Mr. Van Cleve is.

A. The last I heard from him was indirectly from Portland, Oregon.

Q. I will ask you where the head offices of the Railway Co. are located.

A. They have offices in Seattle and in New York. Mr. BORYER.—That is all.

Cross-examination.

(By Mr. COBB.)

Q. Referring to this time-table, how close were the trains, in December, 1911, following that schedule?

A. Following the schedule?

Q. Yes.

A. I don't know exactly what you mean by that question.

Q. What I mean is, were you running on that schedule as an actual fact?

(Testimony of R. J. De Leo.)

A. They were running under that time-table; yes, sir.

Q. I didn't ask you that. I asked you if, as a matter of fact, they were running on that schedule.

A. You mean were they on time, according to that schedule?

Q. Yes.

A. No, sir; they were not—I would have to refer to the train-sheets to find out.

Q. The train-sheets would show what was the actual running? A. Yes, sir. [303—254]

Q. That schedule produced here is just what was supposed to be—what you intended to keep up, summer and winter, was it not?

A. Yes, that was what they were operating under.

Q. Mr. Hawkins who is dead was not superintendent at that time and general manager?

A. At what time?

Q. In December, 1911, and January, 1912—he had gone out then, had he not?

A. I think he still held that title, but I am not sure of the date.

Q. Mr. Geiger was superintendent at that time?

A. Yes, sir.

Q. And had charge of the road? A. Yes, sir.

Q. You referred here to the road being placed under the Interstate Commerce Commission in September, 1912. What do you refer to, the decision in the Humboldt case? A. I don't get the question.

Q. You stated in your testimony here in answer to Mr. Boryer that the road came under the Interstate

(Testimony of R. J. De Leo.)

Commerce Commission in September, 1912. Do you refer to the decision in the Humboldt case then?

A. All I know, we received advices from our general offices to the effect that from that date we would be under the jurisdiction of the Interstate Commerce Commission, and would be governed by their rules and regulations.

Q. And the laws passed pursuant thereto?

A. Yes, sir.

Q. Don't you know that that was based on the decision of the Supreme Court of the United States in the Humboldt case, commonly known as the Humboldt case, and the Interstate [304—255] Commerce Commission always had been in effect up here? A. I don't know.

A. I don't know.

(By Mr. BORYER.)

Q. I will ask you if you have that letter, giving you those instructions, with you?

A. No, I have not—I might have it here. I have a letter from him stating that we would be under the jurisdiction in effect August first and that was afterwards changed to September first, on account of the railroad not being able to get around to meeting the requirements of the commission by August first, 1912.

Q. I hand you a letter under date of June 3, 1912, signed R. W. Baxter to George Geiger, Superintendent, Cordova, Alaska, and ask you if that is the letter you have reference to. A. Yes, sir, it is.

Mr. BORYER.—We desire to offer this in evidence.

(Testimony of R. J. De Leo.)

Mr. COBB.—I don't think it is very material but I have no objection to it.

The letter is marked Defendant's Exhibit "3" and admitted in evidence.

Q. I hand you Defendant's Exhibit #3 and ask you if that is the letter we have been speaking of and to which you have reference. A. Yes, it is.

Mr. BORYER.—I will read it.

By the COURT.—I will say this to the jury—a letter from Mr. Baxter to this company, to this superintendent, probably would not be relative evidence at all unless it is later on connected with the Interstate Commerce Commission to Baxter . [305—256] or someone else. I do not understand that Baxter belongs to the Interstate Commerce Commission, or represents them in any way.

Mr. BORYER.—No, he is connected with the company. We will connect Baxter up all right.

Q. Who is Mr. R. W. Baxter?

A. He is Vice-president of the Copper River & Northwestern Railway Co.

Q. Do you know if he is acting president of the same company? A. I don't know.

Q. He is the man who has charge of the Copper River & Northwestern Railway Co., isn't he—all business from his office is transacted through him?

A. All business we have is transacted through him, yes, sir.

Q. Do you know that Mr. George Geiger received this letter? A. I know that he saw that letter.

(Testimony of R. J. De Leo.)

Q. Do you know that he received it in the mail?

A. Yes, sir.

Q. Mr. Geiger is where, now?

A. I do not know.

Q. Is he in Alaska? A. No, sir.

Mr. BORYER.—I will now read the letter.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY.

Seattle, Washington, June 3, 1912.

R. W. Baxter,

Vice-President.

Mr. Geo. Geiger,

Superintendent, Cordova, Alaska.

Dear Sir:

We have been advised by the Interstate Commerce Commission that they will take charge of all railroads in Alaska August 1st, after which time it will be necessary for us to comply in all respects with the Commission's requirements and for your information and guidance am sending you under separate cover, one copy each of [306—257] Act to regulate commerce (as amended) and acts supplementary thereto, which include, Commerce Court Act, Safety Appliance Acts, Act Requiring Monthly Report of Accidents, Arbitration Act, Hours of Service Act, Boiler Inspection Act, Tariff Circular #18A and supplement #2 thereto and General Order #11.

Conference Rulings Bulletin #5, with Supplement #1 thereto and other supplements, bringing the Commission's conference rulings up to date

(Testimony of R. J. De Leo.)

Please acknowledge receipt of these publications, advising that you will comply with the requirements of Commission.

Yours truly,
(Signed) R. W. BAXTER,
V. P.

(By Mr. COBB.)

Q. Have you been complying with the laws providing for the safety of employees since receipt of that letter?

A. Have we been complying with them did you say?

Q. Yes. A. Yes, sir, we have.

Mr. BORYER.—We object to it as immaterial and incompetent.

Objection sustained.

Witness excused. [307—258]

[Testimony of J. W. Forrester, for Defendant.]

J. W. FORRESTER, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. BORYER.)

Q. What is your name? A. J. W. Forrester.

Q. Where do you live?

A. Chitina.

Q. By whom are you employed?

A. Copper River & Northwestern Railway Co.

Q. How long have you been employed by the Copper River & Northwestern Railway Co.?

(Testimony of J. W. Forrester.)

A. I have been working on the railroad about five years.

Q. Were you working for the defendant Railroad Co. during the months of December, 1911, and January, 1912? A. Yes, sir.

Q. I will ask you to state what, if anything, you know concerning the accident at Bridge 75A on the first day of January, 1912. State if you were there, or when you first reached there and what you did.

A. I was not there when the accident occurred. I got there, I think it was the 5th of January—the accident occurred on the first, but there hadn't been anything disturbed up to the time I got there. The rotary was lying over on her right side where she tipped off the bridge and the cords on both sides of the bridge had been burned—on the left-hand side coming toward Cordova.

Q. Perhaps you can describe it a little better from this blue-print, when you get to it (handing witness blue-print).

A. The cords on both sides of the bridge had been burned. The cords of our standard bridge are built of— [308—259]

Q. Are the cords the same as the stringers?

A. Yes, sir; they are built up out of three 8x18 timbers—they are 8 inches wide and 18 inches deep. There is a four-inch space between each one of these stringers and the fire had run along on the inside of these stringers on both sides of the bridge, but on the left-hand side coming toward Cordova the fire had

(Testimony of J. W. Forrester.)

not run as far back, had not burned the cord out, as far as it had on the right-hand side, and on the right-hand side there was about—this represents a pile bent here, the standard pile bent; these two piling here were burned off right on the bottom flush with the top of the ice and the cord was burned out back of that bent—that was the third or fourth bent coming towards Cordova on the bridge.

Q. How is that?

A. This shows the standard pile bent. There are five piling in the bent. Those two piling, the third or fourth bent, I am not positive which, were burned off flush with the top of the ice and there was a pile of coal, cinders and ashes, left around those two piling, where it looked as if it was where the fire had been cleaned and the ashes shoved around them and there wasn't any part of this piling left, as I noticed after I got there and the cord on the right-hand side of the bridge had burned, from that point back toward Chitina probably the distance of a bent, that would be 16 ft. and had run ahead probably 35 or 40 ft. further, and on the other side of the bridge, on the left-hand side, the cord had not burned back that far,—it was not burned back as far as it was on the right-hand side. Those two piling were burned off right flush with the top of the ice.

Q. (By JUROR.) The full length of them?
[309—260]

A. The full length of them; the stem probably stood up five or six feet above the top of the ice and

(Testimony of J. W. Forrester.)

they had burned from that pile of cinders and ashes all the way up.

Q. Now, what end of the bridge was that?

A. That was on the Chitina end of the bridge.

Q. What has been termed here the north end?

A. Yes, sir.

Q. Now, as I understand you, the stringers, or the cords as you call them, run under the track and support the track?

A. Support the ties and the rails and the guard rails; there are three stringers.

Q. What is the size of those stringers?

A. 18 inches deep and 8 inches wide.

Q. Then they are placed side by side?

A. Four inch space between them.

By the COURT.—Then there are more than three on the bridge?

A. There are three on each side, six altogether—three in each cord.

Q. So that the track then is over—on top of that you put a tie, do you not? A. Yes, sir.

Q. And then on top of the tie you put the rail?

A. Yes, sir.

Q. Then right under that rail you have three cords? A. Three stringers.

Q. That has an opening between each stringer of 4 inches? A. Yes, sir.

Q. That is true of the other side, is it?

A. Yes, both sides.

Q. That would be true—the same opening would

(Testimony of J. W. Forrester.)

be across the cap [310—261] upon which these stringers rest, would it not? Those stringers rest on the cap?

A. Yes; there is 30 inches, if I remember correctly, between the cords in the clear on top of the cap.

Q. You don't catch my question. Here is your cap coming across for the purpose of supporting your stringers? A. Yes, sir.

Q. Now, then, you have three stringers. That would be your position of the stringers across the cap, would it not? A. Yes, sir.

Q. And across there would be a tie?

A. Yes, sir.

Q. Now, then, if ashes were sifted down that were pulled from off of this cap here, they would naturally go down between the ties and down between these stringers or cords and land on the cap, would they not? A. Yes, sir.

Q. Then they couldn't get through the cap, could they?

A. No, the cap was 14 inches wide. They would drop through this space on the cap.

Q. And if they were pulled away from this cap, ahead of it or back of it, then the ashes would fall down between the ties, would they not?

A. You mean if the ashes were left on the cap and being pulled off the cap? If the ashes were lying on the cap—if the ashes were lying on the deck, on the ties and being pulled off, they would drop on the cap.

(Testimony of J. W. Forrester.)

Q. When you get away from that cap there are ties across that—there is no cap under there?

A. Yes. [311—262]

Q. And if ashes were pulled off of the ties that didn't have a cap under them, those ashes would drop down to the ground? A. Yes, sir.

Q. When you reached there—you say you reached there on the morning of the 5th?

A. I think that was the date, I am not positive—4th or 5th.

Q. Did you ride or walk down?

A. We mushed down.

Q. Ahead of the train?

A. The train brought us part of the way.

Q. Who was with you?

A. I brought a crew of men down—I don't remember who all.

Q. Had the bridge been disturbed?

A. No, sir, there had been nothing done to it at all.

Q. Now, I will ask you what in your opinion caused that bridge to burn?

A. Why, I think that the pan that had been dumped there, the ashes from that pan, had been pushed off in between the stringers, so they lodged on top of the cap and some had gone down around the bottom of these two piling and burned the piling off and all the stringers that were burned were burned inside, in this space, in this 4-inch space. For instance, you could stand off at the side of the bridge where the cord was still standing—the cord

(Testimony of J. W. Forrester.)

was not knocked down near the rotary on the left-hand side of the bridge—you could stand on one side of that and wouldn't see but very little evidence of fire having been in that cord at all, but these 8-inch stringers, that were originally 8 inches wide, at some places they were not more than an inch [312—263] thick—the fire had run right along in this space.

Q. Was that on the right-hand side going up—that was on the right-hand side going up that the cord had not broken down? A. Yes, sir.

Q. And they were burned on the inside?

A. Yes, sir.

Q. Now, then, was it burned directly over the place where you found the ashes?

A. Yes, those two pilings had been destroyed by fire and the end of that cap was burned off and I don't know what had become of the cord—it had burned up so much that I didn't notice any pieces of it lying around there, still you could not tell; the rotary had mashed it down.

Q. I believe you heard Mr. Lee and Mr. Holden testify that when they arrived there that night, at the time of the accident, that the wind was blowing across in front of the rotary from the river side, over toward the glacier, that would be from the right-hand side of the track going up, over toward the left-hand side? A. Yes, sir.

Q. I will ask you if that is the prevailing wind around there?

(Testimony of J. W. Forrester.)

A. Yes, the wind blows that way most all the time in the winter.

Mr. BORYER.—That is all.

Cross-examination.

(By Mr. COBB.)

Q. You say you went down there on January 5th?

A. I think that was the date; yes, sir.

Q. You went down with the first crew that went back there afterwards? [313—264]

A. Yes, sir.

Q. What did you go down for?

A. To raise the wreck and recover Reed's body.

Q. Did you succeed in raising the wreck and getting out his body? A. We did.

Mr. BORYER.—We object to that as incompetent, irrelevant and immaterial.

Objection sustained.

Mr. COBB.—It is not denied in this case anywhere except in the pleadings that Mr. Reed was killed there.

Mr. BORYER.—I admit that Mr. Reed was killed.

Q. You did see his body? A. Yes, sir.

Q. Now, then, had there been any snow fallen the time when you went down there?

A. I couldn't say.

Q. You couldn't tell whether there had been any further snow or not?

A. The wind had been blowing all the time and the track was drifted nearly full. I don't remember whether there was any snow *fallen* or not.

(Testimony of J. W. Forrester.)

Q. Was the fire still burning?

A. No, the fire was entirely out at that time.

Q. Was there any snow on top of the ashes to speak of?

A. There was some snow on top of the ashes. They were partly covered but there was still some of them that showed above the snow.

Q. You made no search for any other ashes, at other places?

A. No, I did not, any more than I dug up this place where the [314—265] bridge had been destroyed to build a new bridge.

Q. *How* of that bridge had been burned on the right-hand side? A. Coming towards Cordova?

Q. Yes, on the right-hand side coming towards Cordova?

A. Probably 45 or 50 ft., more or less, I think.

Q. How much of it had been burned on the left-hand side, the other side?

A. I would say about probably 20 ft.—less than had been burned on the other side.

Q. Most of the burning was on the right-hand side?

A. Most of the burning was on the right-hand side, coming towards Cordova, yes, sir.

Q. What sort of timbers was the bridge built of?

A. Fir timbers, sawed timbers.

Q. That is rather an inflammable timber, easily set afire? A. Yes, I guess it burns.

Q. That had been your experience with it since you have been on the road?

(Testimony of J. W. Forrester.)

A. We have never used it for firewood or anything like that.

Q. You had it out on the road?

A. Yes, all our bridges are constructed of that kind of timber.

Q. Any others ever get on fire that way?

A. I never saw any of them; no, sir.

Q. Did you ever hear of it?

A. I have heard of one bridge catching fire since I have been there.

Q. You know as a matter of fact that is inflammable timber?

A. I think it would burn as quickly as most any kind of timber.

Q. (By Juror McNIECE.) Were the caps burned, over toward the right-hand side coming toward Cordova?

A. Yes; if I remember correctly there were three caps that [315—266] were burned off, entirely destroyed, just about the middle of the bridge—the right-hand end coming towards Cordova.

Q. (By Juror HUNT.) In your testimony you stated that the two piling on the right-hand side leaving Cordova— A. No, coming toward Cordova.

Q. (By Juror HUNT.) That would be the river side?

A. No, it wouldn't be the river side—the two piling in the third or fourth bent coming toward Cordova.

Q. (By Juror HUNT.) That would be opposite the river, the glacier side? A. Yes, sir.

(Testimony of J. W. Forrester.)

Q. These pilings that were burned off were on the right-hand side coming towards Cordova?

A. Yes, sir.

Q. That is the way I understood it.

A. Yes, sir.

Q. Right opposite where the rotary fell?

A. The cord had been burned back to just behind the bent towards Chitina from that and the rotary in tipping over had broken off one or two piling in that bent as she went over.

Q. These that were burned off, were they opposite to or ahead of where the rotary turned over?

A. Just ahead.

Q. On the same side as the rotary fell?

A. Yes, the cord had burned at that point.

(By Mr. BORYER.)

Q. Give to the jury a description of the piling that was *acrossed* each one of those bents.

A. There were five piling in each bent—there was a good battened [316—267] pile on each side and the load pile that was directly under the rail, that was also battened a little bit, and then the pile directly in the middle of the bridge, the piles outside of the bent, were battened.

Q. Bracing piles?

A. Bracing piles; yes, sir.

Q. (By Juror MANTHEY.) Were they piles or framed bents? A. They were piles.

Witness excused.

[**Testimony of Harry N. Wilson, for Defendant
(Recalled).**]

HARRY N. WILSON, recalled as witness in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. BORYER.)

Q. Where were you working during the month of December, 1911, and January, 1912?

A. The Copper River & Northwestern Railway.

Q. Have you been in the employ of that company ever since that time? A. Yes, sir.

Q. What is your official position at this time?

A. Trainmaster.

Q. How long have you held this position?

A. About two months.

Q. How long have you been railroading? [317—
268] A. Twenty-one years.

Q. All the time?

A. Practically all the time; yes, sir.

Q. Have you followed any other vocation other than that? A. No, sir.

Q. How long have you been working for the Copper River & Northwestern Railway Co.?

A. About three years.

Q. Where were you working before you came here?

A. Working for the Great Northern.

Q. How long did you work for the Great Northern?

A. About five years.

Q. Did you work for any other railroad?

A. Yes, I worked for several.

Q. I will ask you if you were on the rotary train

(Testimony of Harry N. Wilson.)

that left here on the 30th of December which met with an accident at Bridge 75A on the first day of January, 1912? A. Yes, sir.

Q. I am not going to ask you to go through all of that, but I am going to ask you if you heard the evidence to the effect that you held a consultation after this accident. A. Yes, sir.

Q. Where did you go after this consultation?

A. Went to Chitina.

Q. When you came back, how long did you stay in Chitina?

A. I am not positive whether we left there on the third or fourth.

Q. Where did you go then? A. Went to 78.

Q. Who was with you? [318—269]

A. There was Mr. Forrester and the gang of men—I don't know just how many—I don't recall just how many men.

Q. How did you go?

A. The train took us as far as Mile 98 and we walked from there.

Q. Walked from 98 to— A. 78.

Q. 78 or 75? A. 75, the bridge.

Q. Tell the jury what you saw there in connection with the fire, at that bridge.

A. When we reached there?

Q. Yes. Did you examine or see the bridge?

A. I didn't go to the bridge until the next morning. The men went down and they had some of the bridge torn up when I reached there and were preparing to raise the rotary. They took some of the stringers out

(Testimony of Harry N. Wilson.)

but I don't just recall what the burning was or how much it was.

Q. Did you examine the bridge at that time?

A. No, not very closely.

Q. Did you examine it at all?

A. I walked over it but I couldn't recall just how much of it was burned. I know it was burned pretty bad on the right side going south and was burned on the other side some, but I couldn't say just how much.

Q. You didn't examine it closely?

A. No, not enough to give any evidence.

Q. And you wouldn't like to express an opinion as to what you thought caused it?

A. No, sir. [319—270]

Q. Now, I will ask you if when you left here—if counsel will pardon me for leading questions—

Mr. COBB.—Anything to get at the facts as quickly as possible.

Q. You left here on the 30th? A. Yes, sir.

Q. You arrived at Mile 52 and had an accident there with your rotary? A. Yes, sir.

Q. What rotary was that?

A. X2—the large rotary.

Q. What happened after you broke this rotary?

A. We backed to Mile 39.

Q. Why did you go back there?

A. We went back there to get water and keep out of the wind until they brought another rotary to us from Cordova.

Q. Did another rotary come? A. Yes, sir.

Q. How long after you arrived at Mile 39 with this

(Testimony of Harry N. Wilson.)

crippled rotary did this other rotary arrive?

A. I think it was 3:30 in the morning, if I remember right.

Q. Then what did you do with the crippled rotary?

A. We took it to Miles Glacier and the other crew took it and brought X1 to us.

Q. The crew that brought X1 to you took X2 back?

A. It took the disabled rotary.

Q. To what place?

A. We left them at Miles Glacier and I understand they took it to Cordova.

Q. For what purpose? [320—271]

A. Repairs.

Q. Then you proceeded northbound with the rotary X1, the small rotary? A. Yes, sir.

Q. Those were the two rotaries that were owned by the company at the time?

A. At that time, yes, sir.

Q. Then you proceeded north and reached Bridge 75A, did you not? A. Yes, sir.

Q. You took water there, did you? A. Yes, sir.

Q. Then after taking water you went up to Teikhell? A. Yes, sir.

Q. I believed you testified that when you got to Teikhell that you and Scott and who else, took the rotary? A. Taylor.

Q. Took the rotary on up for water and turned it around the loop and headed it south, for Cordova?

A. Yes, sir.

Q. Then the rotary crew were relieved at that point, were they, as soon as you arrived there?

(Testimony of Harry N. Wilson.)

A. That is as I recall it; yes.

Q. Then you started south about 4 o'clock, I understand, in the evening; is that correct?

A. Of that day, yes, sir.

Q. You arrived at this scene of the accident about what time? A. I think it was 7:30 or about that.

Q. Now, the night that you stopped at Bridge 75A for water, did you see anyone cleaning their pans there? [321—272] A. I did not.

Q. I will ask you who has charge of your engines when they start out?

Mr. COBB.—We object to that—he is a conductor and not an engineer.

Objection overruled.

Q. What is your official position?

A. Trainmaster.

Q. What does the trainmaster do—what are his duties?

A. He has charge of the trains and engine-men, to assist the superintendent in his duties and general work.

Q. I will ask you in whose care you put an engine when you send it out. A. The engineer.

Q. Is he responsible for that engine?

A. He has charge of it; yes, sir.

Q. You look to him to take care of that engine, do you not? A. Yes, sir.

Q. Does he have supervision over the fireman?

A. Yes, sir.

Q. I will ask you if, on all the roads you have worked, it is not against the rules to dump ash-pans—

(Testimony of Harry N. Wilson.)

against the rules and regulations, to dump ash-pans or fires, or to permit them to be cleaned on switches, frogs, interlocking apparatus and bridges?

A. Yes, sir.

Q. I will ask you if it is not a fact that all roads require that the engineer is to be held responsible for the fireman's conduct and that he must report any inefficiency or neglect. [322—273]

A. How is that? On all roads?

Q. On all roads that you have worked on?

A. As near as I can remember, that is the rule on all roads.

Q. I will ask you who instructs the fireman as to the manner of cleaning his fires, the manner in which he feeds his fire and the manner in which he keeps up his steam and the manner in which he uses the quantity of coal and oil such as you are using?

Mr. COBB.—We object to that unless the witness qualifies as an engineer and has had some experience in that line of business.

Objection overruled. Plaintiff allowed an exception.

A. The engineer is supposed to instruct his fireman in his duties, as I understand it.

Q. Is it his duty to see that he complies with the rules? A. I should think so; yes.

Q. As a matter of fact he does, does he not, and is required to? A. Yes, sir.

Mr. BORYER.—That is all.

Cross-examination.

(By Mr. COBB.)

Q. Were you ever an engineer? A. No, sir.

(Testimony of Harry N. Wilson.)

Q. You are a superior officer now to the engineers—you are trainmaster? A. Yes, sir.

Q. Are you responsible for them?

A. Yes, in a way.

Q. Just the same way that the engineer is responsible for the [323—274] fireman?

A. Yes, sir.

Q. Who is your superior officer?

A. The superintendent.

Q. He is responsible for you? A. Yes, sir.

Q. And so on? A. I presume so.

Q. And when you get talking about the responsibility of the engineer for the fireman, it is the same responsibility that each superior officer has for his inferiors, is it not?

A. Well, I couldn't say as to that part of it for sure.

Q. What is the distinction? Tell the jury if there is any.

A. Well, if you put a man with the engine, he has charge of the engine—that is the question I was asked.

Q. You are referring particularly to locomotives?

A. No, not necessarily—the conductor has charge of the train.

Q. You have been in these rotaries?

A. Yes, sir.

Q. You know the position of the engineer and his duties in these rotaries are different from what it is on a locomotive?

A. Yes, sir, his duties are different.

(Testimony of Harry N. Wilson.)

Q. And you heard these gentlemen that have been in the rotaries explain where the engineer stands in them, where he has to be to attend to his duties?

A. Yes, sir.

Q. He can't see out—that is all true?

A. All true.

Q. And his fireman is way back behind the engine where he can't [324—275] see him half the time; that is all true? A. Yes, sir.

Q. That is not true of a locomotive, however—the fireman and engineer are right together, aren't they?

A. Yes, sir.

Q. Now, you testified a little while ago, about leaving here on this train on the 30th—as a matter of fact, you were conductor on the rotary outfit, on the caboose and the two hog engines that were pushing?

A. Yes, sir.

Q. When you left here you knew pretty well about how long it was going to take you to get up to Teik-hell? A. I can't say I had the slightest idea.

Q. You didn't expect to get up there inside of 15 or 20 hours?

A. I don't remember that I gave the matter any thought what time it would be.

Q. You know it had been taking all that time to make a number of trips just preceding that?

A. Probably did at the time. I don't remember now whether it did or not.

Q. And when the big rotary broke down you wired back to Cordova for another rotary and another crew brought that rotary out? A. Yes, sir.

(Testimony of Harry N. Wilson.)

Q. Still the company sent the same crew that had left here at 11:45, on the *on the* relief rotary, changed off and sent them on through with it, didn't they?

A. Yes, sir.

Q. They knew they could not get up there under those conditions under thirty or forty hours, didn't they? [325—276]

A. I don't know in regard to time—I couldn't say how long it would take. I don't think the company could at that time.

Q. You knew it would take a long time?

A. I don't know—I don't know that anybody knew what the snow conditions were at that time.

Q. They have a line of telegraph up the road?

A. Not in the worst snow belt—you don't have any telephone communications.

Q. You have telegraph? A. Yes, sir.

Q. They can hear what is going on up the road any moment they want to, can't they?

A. You don't understand me. Where the worst snow or worst delay was, there was no telephones, over the flats.

Q. You have no means there of finding out?

A. No, only through the train.

Mr. COBB.—That will be all.

(By Mr. BORYER.)

Q. At the time you started out here on the 30th, don't you know that they started a train out from Chitina on the same day to meet that train?

A. Yes, sir.

(Testimony of Harry N. Wilson.)

Q. Now, then, I will ask you if it is possible for anybody to tell how long it will take you to go between any two points on the Copper River & Northwestern Railway during the winter? A. No, sir.

Q. Is it not a fact that you may start out here in the morning at 8 o'clock in December or January and arrive at Chitina at 4 or 5 o'clock that evening, and again you may start out [326—277] of here and you would not get as far as 49 in that same length of time? A. That is the condition.

Q. And you can't tell a thing about it until you meet the snow conditions along the line, can you?

A. No, sir.

Q. As a matter of fact, you may get as far as Abercrombie Canyon and when you leave here there will be no snow on the track at all—isn't it possible during the winter-time? A. Yes.

Q. And five minutes before you get there, there may be a slide that will fill that canyon so it will take you two or three days—isn't that a fact?

A. Yes, sir.

Q. Isn't that a fact at other points along the line?

A. Yes, at some points it is.

Q. Now, then, you had charge of this rotary crew, you say, that went out, started from here, on the 30th? A. Yes, sir.

Q. Now, when X1 met you at Miles Glacier was there any of the crew that wanted to come back home that you know of?

Mr. COBB.—We object to that as irrelevant and immaterial.

(Testimony of Harry N. Wilson.)

Q. Did any of them raise any protest as to going any further?

Mr. COBB.—We object as irrelevant and immaterial.

Objection sustained. Defendant allowed an exception.

Q. I will ask you if they did not proceed willingly, northbound?

Same objection.

By the COURT.—I consider it makes no difference under the law whether the employees wanted to work or not. [327—278]

Defendant allowed an exception.

Q. I will ask you if the reason you were delayed on that trip was because of the breaking of your rotary and the weather conditions?

A. That was the principal delay; yes, sir.

Q. Wasn't that the only reason that you were delayed?

A. There might have been other small delays that I don't recall.

Q. You don't recall any, do you? A. No, sir.

Q. Then it was because of the weather conditions and because of the breaking down of the rotary?

A. Yes, sir.

Q. Now, then, you were going from Terminal No. 1 to the next terminal, Teikhell, is that correct?

A. Yes, sir.

Q. That was your first terminal after leaving Cordova? A. Yes.

(Testimony of Harry N. Wilson.)

(By Mr. COBB.)

Q. The answer how far you are going to get on this road in December prevails on any mountain road, subject to heavy snowstorms, the same sort of answer?

A. That I can't say that it prevails on every mountain road.

Q. I say that are subject to heavy snowstorms.

A. I suppose any road that is subject to heavy snowstorms are liable to delays.

Witness excused.

Testimony closed. [328—279]

Whereupon defendant filed its motion for a directed verdict as follows:

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY,

Defendant.

Motion for Directed Verdict.

Comes now the defendant and moves the Court for a DIRECTED VERDICT in this action for the following reasons:

1.

Because plaintiff bases her cause of action upon

the negligence of the defendant, which negligence consisted in the "Defendant allowing its roadbed to get out of repair, the ties to be burned and destroyed by ashes and cinders negligently allowed by defendant to be dumped upon the roadbed."

That the plaintiff's witnesses have admitted and established that the fireman on the rotary dumped the ashes from the rotary on the roadbed, which witness also admitted that the engineer, J. E. Reed, knew that he had dumped the ashes from said rotary on the bridge, that J. E. Reed was in charge of said rotary and had supervision over the fireman, that he had informed the engineer, J. E. Reed, that he was going to dump the ashes from the rotary on the bridge and the said J. E. Reed saw him cleaning the pan of the rotary on the bridge, that plaintiff's witness further established that it was dangerous and against the rules of the company to clean or dump the pan on the bridge, and against the rules of the defendant company to clean or dump the ashes from the rotary at any place without extinguishing *all* [329—280] fire, which rule made both the engineer and fireman equally liable, that the ashes were drawn from the rotary and the fire not extinguished as required by said rule and no evidence has been introduced by plaintiff that any other ashes and cinders were dumped upon the roadbed; that plaintiff's evidence shows that the said J. E. Reed violated the rule of dumping or cleaning the pan of his rotary on the bridge, and also the rule requiring all fire cleaned or dumped to be extinguished.

That plaintiff has failed to make out a case against the defendant.

Wherefore defendant prays that the Court direct a Verdict for this defendant.

Which motion for a Directed Verdict was by the Court denied and defendant allowed an exception to the ruling.

After argument by counsel the Court delivered his Instructions as follows:

Instructions of the Court.

Gentlemen of the Jury:

The duties of the attorneys in presenting the evidence to you have ended. Your duty to properly consider and apply under these instructions the facts established by the evidence now begins.

To assist you and at the same time perform a duty devolving alone upon the judge of this court I now proceed to state for your guidance the law applicable to the facts under the evidence in the case. The law as given you by me must be followed by you in reaching your verdict in this case.

All matters or questions of fact are for your decision [330—281] alone, as well as to the value and weight of the testimony in the case, under such rules as I shall hereinafter set out for your guidance.

This is a civil action for damages alleged to have been caused by the defendant company in the death of one J. E. Reed, the plaintiff's deceased husband.

The action is brought by deceased's wife for her benefit as well as that of the two children of the deceased and of the plaintiff.

The death of plaintiff's husband is alleged to have been caused at bridge 75A on the railway of the defendant company, by reason of a rotary on which deceased was employed by the defendant company as an engineer, leaving the rails and falling to the earth at that point.

It is undisputed that the cause of the rotary leaving the track on the said bridge 75A was the burnt condition of the ties and superstructure, leaving insufficient support to sustain the weight of the rotary.

The point for you gentlemen to decide in this case is, was the defendant company, under the law and the evidence as it has been developed in the case, responsible in this case to plaintiff and her children in damages for the death of the deceased resulting from the fall of the rotary through the bridge in question?

You are instructed that you must decide in this case the following questions:

1. Whether there was any negligence on the part of the defendant company in the cause of the death of J. E. Reed. [331—282]

2. Whether there was any negligence on the part of the defendant and also on the part of the said J. E. Reed which caused the latter's death. If so, what part of the negligence was attributable to the defendant company and what part to the deceased, Reed?

3. Was the cause of the death of Reed by the falling of a rotary of defendant through a bridge a risk that was assumed *assumed* by the deceased in his employment with the defendant company as an engineer?

4. Was the cause of the death of Reed due to the negligence alone of a fellow-servant of the deceased, Reed?

5. Was the cause of the death of Reed due to a negligence on the part of the defendant company in some duty reasonably imposed upon it, to be exercised by it in maintaining proper inspection of its road and roadbed, bridges and track, and for which duty the defendant company is liable, in the event you find by a preponderance of the evidence in the case that a duty not performed by the defendant company, through any of its officers, agents or employees, was the cause of the deceased's death?

You will understand that different instructions must be given to cover these questions just mentioned, so you must bear this connection in mind—some instructions based upon facts that warrant a verdict for the plaintiff and others which warrant a verdict for the defendant company.

You will bear all this in mind when reading and applying these instructions, and not fail to read and construe them together as one whole, instead of picking out any particular one isolated instruction, without fully understanding its connection with the rest of these instructions and basing your verdict upon it alone. [332—283]

The Act of Congress applicable to Alaska and under which this action is brought, so far as applicable to the case, provides:

“That every common carrier by railroad in the territories (and Alaska is a Territory of the

United States) shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions or in case of the death of such employee to his or her personal representative for the benefit of the surviving widow or husband and children of such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment."

The Act further provides:

"That in any action brought against any common carrier under or by virtue of any of the provisions of this Act, to recover damages for injuries to or for the death of any of its employees, that such employee shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee."

You are instructed: A railroad company is liable to the personal representative of a deceased employee, for the benefit of the widow and children, where the death of such employee was due to the negligence of any of its officers, agents or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machin-

ery, track, roadbed, ways or works.

It is the duty of a railroad company to keep and maintain its track, roadbed and ways in a reasonably good and safe condition for the operation of its engines and trains over the same, and to exercise such care in that respect as not to unnecessarily endanger the lives of its employees operating its trains and engines over such road; and a failure of the railroad company to exercise reasonable and ordinary care in that respect is negligence [333—284] which will render the company liable for all damages to an employee, or if killed, to his personal representative, for injuries resulting from such negligence. This duty to keep and maintain its roadbed, track and ways in safe condition is not satisfied merely by constructing it safe to begin with, but it is the duty of the company to have the track and ways watched and inspected at sufficiently reasonable intervals as to discover and repair or guard against defects arising from the operation of the road, which would endanger the lives and persons of its employees operating its trains and engines over the same, and a failure to exercise ordinary care in that respect is negligence.

If you find and believe from the evidence in this case that J. E. Reed was in the employ of the defendant as an engineer on or about January 1, 1912, and that while so employed the engine upon which he was at work was derailed and he was killed, and that the accident in which he was killed was caused by the negligence of the defendant in failing to keep its roadbed, track or ways in a reasonably safe condition, then your verdict should be for the plaintiff.

You are further instructed that the employee does not assume the risk of dangers due to the negligence of the employer, as that term will be explained to you in these instructions.

A railroad company is liable to an employee, or in the event of his death to his personal representative, for all damages for injuries caused by the negligence of any of its officers, agents or employees in performing duties of the defendant company, or failing to perform the same. And in this case, [334—285] if you find and believe from the evidence that the accident in which J. E. Reed was killed was due to, or caused by, the negligence of any officer, agent or other employee of the defendant company in that respect, you should find for the plaintiff.

If you find for the plaintiff under the instructions given you, you will determine the amount of your verdict. In arriving at this amount you will assess the damage at such sum as will compensate the plaintiff and her minor children for their pecuniary loss resulting from the death of the husband and father. In estimating this loss it is proper for you to take into consideration the age, health, habits, occupation, expectation of life, mental and physical capacity for and disposition to labor, and the probable increase or decrease of that capacity with the lapse of time; his earning capacity; the care and attention, the instruction and training, one of his disposition and character may be expected to give to his family, and thus determine the value of the life. From this amount deduct the personal expenses of the deceased, and the balance, reduced to its present

value, would be the present amount of your verdict, provided that the minor children of the deceased would not be entitled to compensation for the death of the deceased for a period beyond their attaining their majority.

You are instructed that the defendant company is a common carrier by railroad; that as such it is liable in damages to the plaintiff and her two children for the death of J. E. Reed, if such death you find resulted in whole or in part from the negligence of any of the defendant's officers, agents or employees, or by reason of any defect due to the said defendant company's negligence in its roadbed, bridge or ties or track at point of [335—286] bridge 75A on said defendant company's railroad on January 1, 1911.

You are further instructed that the defendant company would be none the less liable under the foregoing instruction for its negligence, if any, if you find that the said J. E. Reed may have been guilty of contributory negligence in causing the condition at Mile 75 which resulted in his death, but you are further instructed in this connection that if you should find that the negligence of J. E. Reed contributed to the cause of his death, the damages, if any, resulting, should be diminished in proportion to the amount of negligence attributable to the said J. E. Reed in causing his death.

You are instructed that the Act of March 4, 1907, passed by the Congress of the United States and applicable to the defendant company, its officers, agents and employees engaged in the transportation of passengers or property by railroad in the Territory of

Alaska, provided that it shall be unlawful for any common carrier, its officers or agents, subject to this Act, to require or permit any employee subject to this Act, to be or remain on duty for a longer period than sixteen consecutive hours, and whenever such employee of such common carrier shall have been continuously on duty for sixteen hours, he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty, and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having at least eight consecutive hours off duty, provided that the provisions of this act shall not apply in any case of casualty or unavoidable accident [336—287] or the act of God, nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal and which could not have been foreseen, and provided further that the provisions of this act shall not apply to the crews of wrecking or relief trains.

You are further instructed that this Act became effective and in full force and effect on March 4, 1908.

You are further instructed that if at the time of the death of J. E. Reed the defendant company was guilty of violating the statute of the United States providing that employees of its railroad should not be employed in any one day of twenty-four hours more than sixteen consecutive hours without providing a rest of eight hours, and you further find the

breach of this law by defendant in any way contributed to the injury and death of Reed, and then if you further find under the last above hereinbefore instruction that the said J. E. Reed was guilty of contributory negligence with the defendant company in causing his death, then the said contributory negligence of the said J. E. Reed, if any, should not be considered by you in assessing the damages, if any, against the defendant company in favor of the plaintiff and her children herein.

Since the terms negligence, contributory negligence and assume risk are employed, not only in the pleadings and by the attorneys in the case, but also in the instructions, I therefore define them for your guidance in the order named.

Negligence is the failure to do what a reasonably prudent person would ordinarily have done under the circumstances of the [337—288] situation, or doing what a person under existing circumstances would not have done.

Reasonable and proper care must have reference to surrounding circumstances.

You are instructed that the term contributory negligence means the want of ordinary care upon the part of the person injured by the actionable negligence of another, combining and concurring with that negligence and contributing to the injury as a proximate cause thereof, without which the injury would not have occurred.

You are instructed that the term “assumed risks” means that the deceased in this instance is presumed to have assumed all the risks and hazards incident

to the employment and known to him while he was engaged by the defendant company on the rotary.

You are instructed that if you find the deceased was guilty of contributing by his negligent acts in dumping or knowingly permitting his fireman to dump and leave unextinguished cinders and ashes from his rotary on the bridge in question, and that this caused the death of J. E. Reed, yet if you further find that the defendant company was subsequently and before the time the rotary fell through the said bridge on January 1, 1912, negligent in not providing through its proper agents and employees the presence of a track-walker to inspect the said road at the point in question, at bridge 75A, and you further find that such track-walker was not so engaged by said defendant company, and the presence of such track-walker would naturally have discovered the condition of the bridge in time to have prevented the accident on January 1, 1912, then the said defendant is liable, and your verdict must be for the plaintiff. [338—289]

You are instructed that if the deceased met his death alone through the negligence of his fellow-servant, the fireman on the rotary at the time, by reason of the latter having dumped the ashes from the pan of the said rotary on the bridge 75A and failed to extinguish the said ashes, and said hot ashes caused the rotary to fall through the bridge on January 1, 1912, then your verdict must be for the defendant.

You are also instructed that if the deceased met his death through any cause or risk assumed by the

deceased, then your verdict must be for the defendant.

You are instructed that if you find the defendant company was in no way negligent in its duties to its employees and to the deceased, and the injury to the said deceased occurred alone by reason of deceased's own negligence or the negligence of his fellow-servants, then your verdict must be for the defendant, unless you further find that the defendant was guilty of a violation of the labor hour laws as hereinbefore set out and such violation contributed to the injury of the deceased.

You are instructed that if the Copper River & Northwestern Railway Company had issued or posted a rule or bulletin as follows:

“Cordova, Alaska, July 16, 1910.

“TO ALL ENGINEERS, FIREMEN, HOSTLERS,
and ALL CONCERNED:—

Do not fail to extinguish all fire in ashes removed from ash-pans.

No excuse will be taken for the burning of ties or other damage to property, as a result of a failure to do this. Engineers will be held equally responsible with their firemen in [339—290] this matter.

(Signed) J. R. VAN CLEVE,
Superintendent.”

And if you find that the engineer knew that the pan of his rotary was cleaned on the bridge, and the pan dumped where he received his injury and that Engineer J. E. Reed failed, neglected or refused to extinguish or put out all the fire removed from his rotary or pan, and the fire from his rotary or the pan

was the cause of the burning of the bridge, and the unsafe condition of the roadbed was caused by the fire being dumped from the pan, you are instructed that the deceased was guilty of contributory negligence.

You are instructed that if the rules of the Copper River & Northwestern Railway Company required the engineers to extinguish all fire in ashes removed from ash-pans on his engine or rotary and the fire removed from the engine or rotary in charge of J. E. Reed was not extinguished, and this fire was the cause of the roadbed being out of repair and the ties burned and destroyed by reason of same having been dumped upon the roadbed at the point or place where deceased was injured, then you are instructed that the deceased was guilty of contributory negligence.

You are instructed that it was the duty of the deceased to be conversant, to know and obey the rules of the Copper River & Northwestern Railway Company regarding the running and operation of the rotary which he was operating.

You are instructed that if you find from the evidence the deceased knew or ought to have known that dumping the ashes and fire from his rotary on the bridge was dangerous and liable to [340—291] burn the bridge, and the bridge was burned by reason of the ash-pan from his rotary being cleaned or dumped on the bridge and was injured by reason of the burning of the bridge, you are instructed the deceased was guilty of negligence.

You are instructed that if the deceased failed to

exercise ordinary and reasonable care, which care is such as an ordinary prudent man would exercise under similar circumstances, he is guilty of contributory negligence.

You are instructed that the burden is upon the plaintiff to establish her cause of action by a preponderance of evidence, and that if the plaintiff fails to prove by a preponderance of the evidence that the defendant, Copper River & Northwestern Railway Company, was negligent as complained of in the complaint, you are instructed that the plaintiff cannot recover in this action.

You are instructed that the plaintiff alleges that the deceased, J. E. Reed, met his death by reason of defective roadbed by reason of the Copper River & Northwestern Railway Company permitting or negligently allowing ashes to be dumped on the roadbed. You are instructed that the plaintiff can only recover upon said allegations.

You are instructed that the Act for the Hours of Service Law does not apply in any case of casualty or unavoidable accident, or the act of God, nor where the delay was a result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal and which cannot have been foreseen, nor does the Act apply to the [341—292] crews of wrecking or relief trains.

This is a civil case as distinguished from a criminal case, and is an action for damages. In a civil case it devolves upon the person who alleges affirmatively a thing to prove it by a preponderance of the

evidence. Therefore, in this case it devolves upon the plaintiff, who alleges the damages and the cause of it, to prove to you by a preponderance of the evidence the allegations contained in her complaint, which you are referred to, and which you will take with you to your jury-room. By a preponderance of the evidence I mean this, that when you take and consider all the evidence in the case, the evidence which you believe to be truthful, and all truthful evidence you should weigh carefully and consider, and one side or the other of the scales balances, that side which weighs the heavier, balances down, and is the preponderance of the evidence; therefore, if you find under the issues in this case that the evidence preponderates in favor of the plaintiff, then your verdict would be for her. If, however, you find that it weighs equally, neither side balances, then your verdict would be for the defendant, as it would be if it balanced in favor of the defendant; by reason of what I have already told you that the plaintiff has the burden of proving by a preponderance of the evidence the allegations of her complaint, if it did not preponderate for her or if it preponderates for the defendant, she loses.

Next I go to the question of testimony, how you should receive it, and how you should weigh it. While the duty devolves upon you to consider and find all questions of fact, you are not at liberty to arbitrarily disregard testimony and give undue [342—293] weight to it. You are to consider the testimony according to the rules of evidence and the

law as I shall give it to you. You should, however, in weighing the testimony in the case, give close attention and due effect to the appearance of the witness upon the stand. I mean by that, his personal demeanor, his actions, movements of hand and feet, etc., his facial expression or otherwise, or while he is in the courtroom under your inspection, as far as you are able to observe and see him. You should also take into consideration their apparent candor or otherwise to tell you the truth, the probabilities of their story, the opportunities they had of seeing or knowing the things about which they testified before you, and what is most important of all in that direction, probably, is the interest, if any, the witnesses have in the outcome of the case.

You should take all these matters into consideration and then give due and careful consideration to all the testimony which you believe to be truthful. If you believe that some witness has given testimony in some material particular of this case that is untruthful, you should disregard that entirely and give due weight to that which you believe to be truthful or is corroborated by other evidence, by other witnesses; that is to say, a witness might be untruthful about another part of it, and if he is substantiated by other witnesses on the part that is truthful, you can consider the truthful part of the testimony, otherwise you would have to disregard the witness' testimony where you find him untruthful in regard to any material point in the case. [343—294]

**[Certificate of Official Stenographer to Transcript of
Testimony, etc.]**

I hereby certify that I am the official Court Stenographer for the Third Judicial Division, Territory of Alaska; that as such Official Stenographer I reported the proceedings in the trial of the above-entitled cause, to wit, E. A. Reed, as Administratrix, etc., vs. Copper River & Northwestern Railway Co., and that the above is a full, true and correct transcript of my shorthand notes taken at said trial.

Dated at Valdez, Alaska, June 20, 1913.

ISAAC HAMBURGER. [344]

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED, Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

**Order Allowing, Certifying and Settling Bill of
Exceptions.**

It appearing to the Court that the defendant has prepared and duly served upon attorney for the plaintiff within due time a proposed Bill of Exceptions, and said proposed Bill of Exceptions having

been delivered to the Clerk of the above-entitled court for the Judge thereof, and the Clerk having delivered said proposed Bill of Exceptions to said Judge, and said Judge of said Court having duly designated the 17 day of July, A. D. 1913, as the time at which he would settle the Bill of Exceptions, and both plaintiff's and defendant's attorneys having been informed of the time for settling the Bill of Exceptions as designated by the Judge, and the said matter coming regularly on for hearing for the purpose of settling the said Bill of Exceptions on the 17 day of July, A. D. 1913, and both attorneys for plaintiff and defendant being present,—

IT IS THEREUPON, and is hereby ORDERED that the proposed Bill of Exceptions be allowed and the same shall be and is hereby settled and allowed as a Bill of Exceptions herein, and the same shall be presented to the Judge of this Court for his certificate.

And it further appearing to the Court that said proposed Bill [345] of Exceptions conform to the truth and is in proper form, it is therefore ORDERED that the said Bill is a true Bill of Exceptions, and the same is hereby approved, allowed and settled, and ordered filed and made a part of the record in this cause.

Done in open Court this the 17 day of July, A. D. 1913.

FRED M. BROWN,
Judge. [346]

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED, Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

Court's Certificate to Bill of Exceptions.

I, Fred M. Brown, Judge of the above-entitled court, do hereby certify that the above and foregoing Bill of Exceptions in the above-entitled cause is a true bill of exceptions and the same has been and is approved, allowed and settled and ordered filed and made a part of the record in said cause.

Done in open court this the 17 day of July, A. D. 1913.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy.

Filed in the District Court, District of Alaska, First Division. Jul. 17, 1913. E. W. Pettit, Clerk. By ———, Deputy. [347]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY,

Defendant.

Instructions [Requested by Defendant].

Comes now the Copper River & Northwestern Railway Company and requests the Court to make the following instructions in the above case:

I.

You are instructed that if the Rules of the Copper River & Northwestern Railway Company required the deceased to extinguish all fire in ashes removed from ash-pans of his engine or rotary, and the fire removed from the engine or rotary was not extinguished, and this fire was the cause of the roadbed being out of repair and the ties burned and destroyed by reason of same having been dumped upon the roadbed at the point or place where the deceased was injured, then you are instructed that the deceased assumed the risk of not seeing that the fire was out and cannot recover in this case.

(Refused.)

II.

You are instructed that if the Copper River &

Northwestern Railway Company's roadbed was out of repair, the ties burned and destroyed by ashes and cinders by being dumped upon the roadbed, and said deceased knew that ashes and cinders had negligently been allowed to be dumped upon the roadbed, which ashes and cinders caused the ties to be [348] burned and destroyed by ashes and the roadbed made unsafe, you are instructed that the plaintiff cannot recover in this case.

(Refused.)

III.

You are instructed that it was the duty of the deceased in this case to obey all rules and regulations of the Copper River & Northwestern Railway Company, and that if the deceased failed, neglected, or refused to obey said rules, and his injury was caused by reason of the deceased failing, neglecting or refusing to obey said rules, the deceased was guilty of contributory negligence.

(Refused.)

IV.

You are instructed that if you find from the evidence that the deceased, J. E. Reed, was engineer of the rotary, and as such engineer he has charge of the rotary, and as such engineer he is responsible for the conduct and acts of the fireman, and from the evidence you find that the fireman of the rotary dumped or cleaned the pan of the rotary on the bridge, and that this was the cause of the unsafe condition of the roadbed, then you are instructed that the deceased cannot recover in this action.

(Refused.)

V.

You are instructed that if you find from the evidence that it was the duty of the deceased to know the contents of the time-table in use on the road at the time of the accident to him, and a time-table was in use and that said time-table contained certain special rules, one of which stated where the bulletin-books are located, and it was the duty of the deceased to examine the bulletin-books, and said bulletin-books were accessible and contained a bulletin that required the deceased to extinguish all fire in ashes removed from ash-pans, and you find that deceased failed to [349] extinguish all fire removed from the ash-pan of his rotary, and that his failure to extinguish or see that it was extinguished caused the bridge to burn and make the roadbed unsafe and this was the cause of J. E. Reed's death then you are instructed that the deceased was guilty of negligence for which the defendant, Copper River & Northwestern Railway Company, cannot be held liable.

(Refused.)

You are instructed that if the deceased, being a man of mature age and experience in railroading, knew or by the exercise of ordinary railroad experience and intelligence, that it was dangerous to dump from his rotary the pan on the bridge, and that the bridge was made unsafe by reason of the pan from his rotary being dumped on the bridge and he was injured by reason of the unsafe condition of the bridge, caused by the dumping of the pan of his rotary on the bridge, then you are instructed that the deceased was guilty of negligence.

(Refused.)

VII.

You are instructed that if the deceased, being a man of mature age and experience in railroading, knew or by the exercise of ordinary railroad experience and intelligence that it was dangerous to dump or allow to be dumped from his rotary the pan on the bridge, and that the bridge was made unsafe by reason of the pan from his rotary being dumped on the bridge and he was injured by reason of the unsafe condition of the bridge caused by the dumping of the pan of his rotary on the bridge, then you are instructed that the deceased was guilty of negligence and cannot recover in this action.

(Refused.)

VIII.

You are instructed that if you find from the [350] evidence that the deceased as engineer of the rotary, is responsible for the acts of the fireman and the fireman of his rotary cleaned the pan of the rotary on the bridge and it was *dangers* to clean the pan on the bridge and the bridge was made unsafe by reason of the pan having been cleaned thereon, and the deceased met his death by reason of the unsafe condition of the bridge caused by the pan being thereon, then you are instructed that the deceased was guilty of negligence and cannot recover in this action.

(Refused.)

IX.

You are instructed that if you find from the evidence that the deceased had charge of the rotary and had supervision over the fireman, and is responsible for the acts of the fireman in connection with the fire-

man's work around and upon the rotary, and you further find that the fireman of the rotary cleaned his pan on the bridge and by reason of having cleaned the pan on the bridge the bridge was made unsafe and the deceased met his death by reason of the unsafe condition of the bridge, then you are instructed that deceased cannot recover in this action.

(Refused.)

X.

You are instructed that if you find from the evidence that the deceased knew that the fireman on the rotary cleaned his pan on the bridge, which was made unsafe by reason of the fireman cleaning his pan on the bridge, and the deceased met his death by reason of the fireman cleaning his pan on the bridge and failing to extinguish all fire from the ashes of the pan cleaned on the bridge, then you are instructed that the deceased assumed all of the risks and hazards arising from or by reason of the pan being cleaned on the bridge.

(Refused.)

XI.

You are instructed that if you find from the [351] evidence that the deceased was in charge of the rotary and as such had supervision over the fireman, and that it was the deceased's duty to see that the fireman extinguished all fire in ashes removed from the ash-pan on the rotary and the deceased failed or neglected to do this, and by reason of the deceased failing to see that the fireman extinguished all fire and he met his death by reason of failure to see that the fireman extinguished all fire, then you are in-

structed that the deceased was guilty of negligence, and plaintiff cannot recover in this action.

(Refused.)

XII.

You are instructed that if you find from the evidence that the deceased's injury was caused by reason of negligence of the fireman or a fellow-servant of the deceased, that he cannot recover in this action.

(Refused.)

XIII.

You are instructed that the burden is upon the plaintiff to establish her cause of action by a preponderance of evidence, and cannot recover unless she proves by the preponderance of evidence not only that the defendant, Copper River & Northwestern Railway Company, was negligent, but must also prove that the defendant's negligence contributed to the cause of the injury to the deceased, and if she fails to establish these facts by the preponderance of the evidence, the plaintiff cannot recover.

(Refused.)

XIV.

You are instructed that it was the duty of the deceased, J. E. Reed, to be conversant with the rules of the Copper River & Northwestern Railway Company pertaining to the running and operating of the rotary, including rules regarding the extinguishing of fire from the ash-pan of his rotary.

(Refused.) [352]

XV.

You are instructed that if you find from the evidence that the deceased, J. E. Reed, disobeyed any

rule of the Copper River & Northwestern Railway Company and he was injured or killed by reason of his disobeying said rule or rules, you are instructed that the plaintiff cannot recover in this action.

(Refused.)

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 3, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [353]

*In the District Court of the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY,

Defendant.

Motion for Directed Verdict.

Comes now the defendant and moves the Court for a DIRECTED VERDICT in this action for the following reasons:

I.

Because plaintiff bases her cause of action upon the negligence of the defendant, which negligence consisted in the “Defendant allowing its road-bed to get out of repair, the ties to be burned and destroyed by ashes and cinders negligently allowed by defendant to be dumped upon the roadbed.”

That the plaintiff's witnesses have admitted and established that the fireman on the rotary dumped the ashes from the rotary on the roadbed, which witness also admitted that the engineer, J. E. Reed, knew that he had dumped the ashes from said rotary on the bridge, that J. E. Reed, was in charge of said rotary and had supervision over the fireman, that he had informed the engineer, J. E. Reed, that he was going to dump the ashes from the rotary on the bridge and the said J. E. Reed saw him cleaning the pan of the rotary on the bridge, that plaintiff's witness further established that it was dangerous and against the rules of the company to clean or dump the pan on the bridge, and against the rules of the defendant company to clean or dump the ashes from the rotary at any place without extinguishing *all* fire, which rule made both the [354] engineer and fireman equally liable, that the ashes were drawn from the rotary and the fire not extinguished as required by said rule and no evidence has been introduced by plaintiff that any other ashes and cinders were dumped upon the roadbed; that plaintiff's evidence shows that the said J. E. Reed violated the rule of dumping or cleaning the pan of his rotary on the bridge, and also the rule requiring all fire cleaned or dumped to be extinguished.

That plaintiff has failed to make out a case against the defendant.

Wherefore defendant prays that the Court direct a verdict for this defendant.

R. J. BORYER,
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 3, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [355]
[356]

*In the District Court of the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, Administratrix of the Estate of J.
E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY,

Defendant.

**Defendant's Exceptions to Court's Instructions to
Jury and Formation of Jury.**

This cause having come on to be heard on the 30th day of April, A. D. 1913, and it having been submitted to the jury on the 3d day of May, A. D. 1913, and it having been stipulated between the attorneys for the plaintiff and defendant in the presence of the jury, and before it had retired, and in the presence of the Court, that the plaintiff and defendant have until and including the 5th day of May, A. D. 1913, to make exceptions to Instructions given and refused and to the trial of said cause.

Now, on this the 5th day of May, A. D. 1913, the defendant makes the following exceptions:

I.

Excepts to the formation and selection of the jury

in this case for the reason that a regular jury, as provided by law, was drawn for this special term of court to be held at Cordova, Alaska, beginning April 10, 1913, at which time and place a full panel did not report and thereafter on the — day of April, A. D. 1913, a first special venire was issued according to law and the persons selected and summoned by reason of said first special venire reported to serve as jurors, and that thereafter on the — day of April, A. D. 1913, a second special venire was issued, which said second venire demanded and required that the names be [357] selected and limited to Seward, Alaska and Valdez, Alaska; that thereafter the first special venire was discharged from further jury duty; that in selecting the names for the jurors in this case the names of the regular jurors who reported for this term of court together with names of the persons selected from by the second special venire from Valdez and Seward, were placed in the jury-box, and that the names of the persons selected and summoned on the first special venire, who had been discharged, were not placed in the jury-box with the aforesaid named jurors, and that the defendant was required to go to trial with the aforesaid jurors against its will and exceptions to said jury; that the formation of said jury for this trial was contrary to law.

II.

That certain jurors selected in this case admitted that they had served as jurors at regular term of court held in this Division as special veniremen within one year, that defendant challenged said jurors for cause, which challenge was refused by the

Court and exception taken and allowed, and that the defendant was required to and did use its peremptory challenge on said jurors and exhausted his peremptory challenges.

III.

That in the formation of the jury for this case a part of the panel selected out of the original panel, excepting the first special venire, were out deliberating on another case; that the names in the jury-box were exhausted and court adjourned until the return of the jurymen who were out deliberating on another case, at which time defendant was required to have a part of said jurymen used in connection with this case, and that the Court refused to select or complete said jury for this case from the bystanders or body of the District as many qualified persons as was necessary to complete the jury, to which an exception was taken and upon the return of said jury, which had been out deliberating, the jury for this case was completed [358] from such jurymen.

IV.

Defendant excepts to instructions given on page 3, which states as follows: "Was the cause of the death of Reed due to a negligence on the part of the defendant company in some duty reasonably imposed upon it, to be exercised by it in maintaining proper inspection of its road and roadbed, bridges and track and for which duty the defendant company is liable." Defendant excepts to that portion of this instruction, for the reason that there was no evidence introduced in the case showing that it was necessary to maintain

proper inspection of its road and roadbed, bridges and track.

V.

Defendant excepts to the second instruction on page 5, which is as follows: "That in any action brought against any common carrier under or by virtue of any of the provisions of this Act, to recover damages for injuries to or for the death of any of its employees, that such employee shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee," for the reason that said instruction is not applicable to the issues raised in the pleadings in this case. That no allegation is made by charging negligence regarding the safety of employees as provided for in this instruction.

VI.

Defendant excepts to instruction given on page 6, for the reason that said instruction is contrary to the law and not applicable to the facts of negligence alleged in plaintiff's complaint, and for the further reason that said instruction required the defendant to have the track and ways watched and inspected so as to discover and guard against defects arising from the operating of the road by reason of violation of rules promulgated to keep said roadbed and track in good repair. [359]

VII.

Defendant excepts to instruction given on page 7

regarding damages, for the reason that the same is contrary to law and not the proper basis for forming damages in this case.

VIII.

Defendants excepts to instruction given on page 8, for the reason that said instruction fixes liability upon the defendant if the said J. E. Reed's death resulted in whole or in part from the negligence of the defendant's officers, agents or employees.

IX.

Defendant excepts to instruction on page 9, for the reason that it is confusing.

X.

Defendant excepts to instruction given on page 10, regarding the hour of service of employees, for the reason that this action against the defendant does not allege and it was not in issue that the defendant had been negligent in working or permitting said men to work contrary to the law, and it is not shown or claimed that the employment of men for a longer period or hours otherwise to or in any manner had anything to do with the cause of the accident.

XI.

Defendant excepts to instruction given on page 11, for the reason that said instruction is contrary to law, and there is no allegation in the complaint that the defendant was violating any statute of the United States regarding employees' employment, and not alleged in the complaint that the accident to said J. E. Reed was due or in any way caused by the defendant violating the statute of the United States

providing that employees should not be employed in any one day of twenty-four hours more than sixteen hours without providing a rest of eight hours.

XII.

Defendant excepts to instruction of page 13 [360] regarding track-walker, for the reason that the complaint does not allege that the defendant was negligent in keeping a track-walker or having a track-walker or that said injury or accident was caused by reason of not having a track-walker, and for the further reason that it was not established that a track-walker was necessary, and for the further reason that it was not shown that a track-walker would have seen or prevented the accident or would have obeyed the rules and bulletins of the Company, and for the further reason that the law does not require an employee to keep and employ a person for the purpose of seeing that an engineer or fireman disobey regulations known to him for his own safety and for the further reason that said instruction is contrary to law.

XIII.

Defendant excepts to instruction given on page 16, for the reason that said instruction provides that if the defendant was guilty of a violation of the labor hour law as before set out, that the hour of service law was not put in issue in this case and there is no allegation or proof that the violation of said law caused or contributed to said injury.

XIV.

Defendant excepts to the refusal of the Court to

give third instruction requested by the defendant on page 3.

XV.

Defendant excepts to the refusal of the Court to give fourth instruction requested by the defendant on page 4.

XVI.

Defendant excepts to the refusal of the Court to *five* fifth instruction requested by the defendant on page 5.

XVII.

Defendant excepts to the refusal of the Court to give seventh instruction requested by the defendant on page 7.

XVIII.

Defendant excepts to the refusal of the Court to [361] give ninth instruction requested by the defendant on page 9.

XIX.

Defendant excepts to the refusal of the Court to give tenth instruction requested by the defendant on page 10.

XX.

Defendant excepts to the refusal of the Court to give eleventh instruction requested by the defendant on page 11.

XXI.

Defendant excepts to the refusal of the Court to give twelfth instruction requested by the defendant on page 12.

XXII.

Defendant excepts to the refusal of the Court to

give thirteenth instruction requested by the defendant on page 13.

XXIII.

Defendant excepts to the refusal of the Court to give fourteenth instruction requested by the defendant on page 14.

XXIV.

Defendant excepts to the refusal of the Court to give fifteenth instruction requested by the defendant on page 15.

XXV.

Defendant excepts to the refusal of the Court to give sixteenth instruction requested by the defendant on page 16.

XXVI.

Defendant excepts to the refusal of the Court to give nineteenth instruction requested by the defendant on page 19.

XXVII.

Defendant excepts to the refusal of the Court to give twenty-first instruction requested by the defendant on page 21.

XXVIII.

Defendant excepts to the refusal of the Court to give twenty-second instruction requested by the defendant on page 22.

R. J. BORYER,

Attorney for Defendant. [362]

Exceptions allowed.

PETER D. OVERFIELD,

Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 5, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [363]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY,

Defendant.

Motion for Judgment Notwithstanding Verdict.

Comes now the defendant, by its attorney R. J. Boryer, and moves the Court to enter judgment in this case in favor of the defendant and against the plaintiff notwithstanding the Verdict returned in said cause for the following reasons:

I.

Insufficiency of evidence to sustain or justify the verdict in the following particulars:

A. That the jury was not justified in finding defendant guilty of any negligence as alleged by the plaintiff nor in finding against said defendant.

B. In that plaintiff based her cause of action because on the first day of January, 1912, defendant had negligently allowed its roadbed to get out of repair, the ties to be burned and destroyed by ashes

and cinders negligently allowed by defendant to be dumped upon the roadbed, and otherwise suffered to become utterly unsafe and unfit as a roadbed. That the plaintiff had agreed and stated that the words "and otherwise suffered to become utterly unsafe and unfit as a roadbed" applied to said ties being burned and destroyed by ashes and cinders negligently allowed by defendant to be dumped upon the roadbed.

C. That the plaintiff's witnesses admitted that on the night of December 30, 1911, the plaintiff's deceased husband [364] was in charge of and had control over Rotary X1; that the fireman of this rotary was under the supervision and instructions of the deceased husband, who was engineer and had charge of said Rotary; that the fireman of this rotary, against the rules and orders of the defendant company, cleaned or dumped the ash-pan of his rotary on bridge 75A, which bridge was destroyed by fire by reason of the ashes being dumped from said rotary on the day of January 1, 1912; that the plaintiff's deceased husband was killed by reason of the fire of said bridge caused by reason of the ash-pan of said rotary being dumped or cleaned on said bridge, which act was against a known rule of the company, and the further known rule that required the plaintiff's deceased husband to extinguish all fire from ashes removed from ash-pan at any and all places.

II.

A. That plaintiff's witnesses admitted that they

left Cordova on the 30th day of December, 1911, the first terminal of the Copper River & Northwestern Railway Company, or the defendant, and that the second or next terminal of defendant company is located at Tiekel or Mile 101 beyond a point where Bridge 75A is located; that said bridge being located on Mile 75 and being between the terminal at Cordova and Tiekel.

B. That the plaintiff's evidence shows conclusively that the reason they were delayed and required to be on duty from the time they left Cordova until they reached Tiekel was because that the rotary that they started from Cordova with met with an accident, which necessitated repairing said rotary and returning it to Cordova, and that they were required to await the arrival of another rotary from Cordova, and that during all of the time between said terminals they were on a single track and were fighting snow, and that it was dangerous to stop said rotary while fighting snow, for the reason that a snow or wind would possibly snow them in and delay them for an indefinite time; that said railroad of the defendant is a single track from Cordova, its first terminal and Tiekel its second terminal. That the acts which required said [365] employees to be on duty for the time that they were on duty was caused by casualties and unavoidable accidents and the act of God, and could not have been foreseen by the defendant, and that said delay was not the result of a cause known to the carrier or its officers, agents in charge of said employees at the time said employees

left the first terminal nor which could have been foreseen by the defendant.

C. That the plaintiff's witness, Albright, who cleaned the ash-pan on the bridge, which fire caused the bridge to burn that caused the death of plaintiff's husband, admitted that the reason he violated the rule of cleaning his fire on the bridge and the further rule of seeing that all fire from ashes removed from ash-pan is extinguished, was because they wished to save time, and for the further reason that if he cleaned the pan off of the bridge he would have been required to shovel some snow from the side of the track so that he could use his hoe for the purpose of cleaning out his pan.

III.

That Bridge 75A was shown to be a safe bridge from the evidence, for the reason that this rotary with its engines, on the night before the accident to the plaintiff's deceased husband, had crossed this bridge several times; that there was not any evidence in this case to show that a track-walker or sectionman is necessary over that particular portion of the road, nor does the law require that the defendant keep a track-walker or sectionman for the purpose of seeing that engineers or trainmen obey rules and orders.

IV.

That the Verdict is against the evidence and law.

Wherefore, defendant prays for Judgment Notwithstanding Verdict.

R. J. BORYER,
Attorney for Defendant. [366]

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 5, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [367]

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED, Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RY. CO.,
a Corp.,

Defendant.

Order Denying Motion for Judgment Notwithstanding Verdict.

Coming on to be heard upon defendant's motion for a judgment notwithstanding verdict, J. H. Cobb appearing for plaintiff and against said motion; R. J. Boryer appearing for defendant and for said motion, and the Court being fully advised in the premises,

IT IS ORDERED that said motion for a judgment notwithstanding verdict be and the same is hereby denied, to which order and ruling of the Court defendant excepts and exception is allowed.

Entered Court Journal No. C.-2, page No. 81.

Special April, 1913, Term May 5th—22d Court Day—Monday. [368]

*In the District Court of the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY,

Defendant.

Motion for New Trial.

Comes now the defendant, by its attorney, R. J. Boryer, and moves the Court that if the Court denies the motion of the defendant to set aside the Verdict in this case and enter Judgment for the defendant, that the Court vacate the Verdict found by the jury in this action returned on the 3d day of May, A. D. 1913, and grant the defendant a new trial of this action, for the following reasons which materially affect its substantial rights, to wit:

I.

Insufficiency of evidence to sustain or justify the verdict in the following particulars:

A. That the jury was not justified in finding defendant guilty of any negligence as alleged by the plaintiff nor in finding against said defendant.

B. In that plaintiff based her cause of action because on the first day of January, 1912, defendant had negligently allowed its roadbed to get out of repair, the ties to be burned and destroyed by ashes

and cinders negligently allowed by defendant to be dumped upon the roadbed, and otherwise suffered to become utterly unsafe and unfit as a roadbed. That the plaintiff had agreed and stated that the words “and otherwise suffered to become utterly unsafe and unfit as a roadbed” applied to said ties being [369] burned and destroyed by ashes and cinders negligently allowed by defendant to be dumped upon the roadbed.

C. That the plaintiff’s witnesses admitted that on the night of December 30th, 1911, the plaintiff’s deceased husband was in charge of and had charge over Rotary X1; that the fireman of this rotary was under the supervision and instructions of the deceased husband who was engineer and had charge of said rotary; that the fireman of this rotary against the rules and orders of the defendant company cleaned or dumped the ash-pan of his rotary on bridge 75A, which bridge was destroyed by fire by reason of the ashes being dumped from said rotary on the day of January 1, 1912; that the plaintiff’s deceased husband was killed by reason of the fire of said bridge caused by reason of the ash-pan of said rotary being dumped or cleaned on said bridge, which act was against a known rule of the company, and the further known rule that required the plaintiff’s deceased husband to extinguish all fire from ashes removed from ash-pan at any and all places.

II.

A. That plaintiff’s witnesses admitted that they left Cordova on the 30th day of December, 1911, the first terminal of the Copper River & Northwestern

Railway Company, or the defendant, and that the second or next terminal of defendant company is located at Tiekel, or Mile 101, beyond a point where Bridge 75A is located; that said bridge being located on Mile 75 and being between the terminal at Cordova and Tiekel.

B. That the plaintiff's evidence shows conclusively that the reason they were delayed and required to be on duty from the time they left Cordova until they reached Tiekel was because that the rotary that they started from Cordova with met with an accident, which necessitated repairing said rotary and returning it to Cordova, and that they were required to await the arrival of another rotary from Cordova, and that during all of the time [370] between said terminals they were on a single track and were fighting snow, and that it was dangerous to stop said rotary while fighting snow, for the reason that a snow or wind would possibly snow them in and delay them for an indefinite time; that said railroad of the defendant is a single track from Cordova, its first terminal, and Tiekel its second terminal. That the acts which required said employees to be on duty for the time that they were on duty was caused by casualties and unavoidable accidents and the act of God, and could not have been foreseen by the defendant, and that said delay was not the result of a cause known to the carrier or its officers, agents in charge of said employees at the time said employees left the first terminal nor which could have been foreseen by the defendant.

C. That the plaintiff's witness Albright, who

cleaned the ash-pan on the bridge, which fire caused the bridge to burn that caused the death of plaintiff's husband, admitted that the reason he violated the rule of cleaning his fire on the bridge and the further rule of seeing that all fire from ashes removed from ash-pan is extinguished, was because they wished to save time, and for the further reason that if he cleaned the pan off of the bridge he would have been required to shovel some snow from the side of the track, so that he could use his hoe for the purpose of cleaning out his pan.

III.

That bridge 75A was shown to be a safe bridge from the evidence, for the reason that this rotaary with its engines on the night before the accident to the plaintiff's deceased husband had crossed this bridge several times; that there was not any evidence in this case to show that a track-walker or section-man is necessary over that particular portion of the road, nor does the law require that the defendant keep a track-walker or sectionman for the purpose of seeing that engineers or trainmen obey rules and orders.

IV.

That the Verdict is against the evidence and law.
[371]

V.

That the amount of damages allowed in this case is excessive and was influenced by passion or prejudice.

VI.

Errors of law occurring in the trial and exceptions

made by the defendant.

VII.

Accident or surprise by which ordinary prudence could not have guarded against.

VIII.

In denying defendant's Motion for a Directed Verdict.

IX.

That the plaintiff bases the accident upon the following negligence as alleged in her complaint in paragraph 3, which is as follows: "That on the first day of January, 1912, defendant had negligently allowed its roadbed to get out of repair, the ties to be burned and destroyed by ashes and cinders negligently allowed by defendant to be dumped upon the roadbed and otherwise suffered to become utterly unsafe and unfit as a roadbed," it being rules by this Court on a Motion to Make More Definite and Certain and being agreed by attorney for the plaintiff that the following words "And otherwise suffered to become utterly unsafe and unfit as a roadbed" referred to ashes and cinders being negligently dumped upon the roadbed. That the plaintiff, against the objections of the defendant and exceptions taken, introduced in evidence matters relating to track-walkers and hours of work performed by the crews on the rotary and other engines pushing the rotary and the train crews on the local train, of the trip of said rotary and trains from the time they left Cordova terminal on the 30th day of December, 1911, up until the night of the accident, January 1, 1912. That the pleadings and issues as made up in

this case do not allege or in any way [372] refer to such facts as would permit the defendant to anticipate that such evidence would be brought out or introduced, or that the plaintiff was basing her cause of action partly on such acts and facts.

X.

For the further reason that the instructions given on page 3 require that the jury consider whether J. E. Reed met his death by reason of the negligence of the defendant company in failing to maintain and inspect its road, and roadbed, bridges and track, that the law does not require the defendant to maintain and keep inspectors of roadbed, bridges, and track until it has been shown by the plaintiff that such was necessary, and in no event does the law require the defendant to keep inspectors for the purpose of inspecting roadbed and bridges for the safety of one who violates a rule, and by violating said rule makes the roadbed or bridge unsafe.

XI.

For the further reason that the Court, on page 5 of its Instructions, instructed the jury that in any action brought against any common carrier under or by virtue of any of the provisions of the Act referred to on said page, to recover damages for injuries to or for the death of any of its employees, that such employees shall not be held to have assumed the risks of his employment, in any case where the violation of such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

That there are no allegations in the complaint and

no evidence in the case to the effect that the said J. E. Reed met his death by reason of the defendant violating any statute enacted for the safety of employees which [373] contributed to the injury or death of the said J. E. Reed, and for the further reason that it was shown by the evidence that all work performed by the said J. E. Reed and other employees of the rotary crew and train crews was performed on a single-track railway between Cordova, their starting terminal, and the next terminal at Tikel or Mile 101, and that the cause of the death of J. E. Reed was the burning of the Bridge 75A, on Mile 75, the fire of which was caused by the deceased permitting his fireman to clean his rotary pan on this bridge, and for the further reason that he did not require or did not put out or extinguish all fire from ashes dumped from this pan onto the bridge, which is contrary to the rules of the company, and plaintiff's evidence shows that the reason he dumped or cleaned his pan on this bridge was because he wished to save time and so he would not be required to shovel some snow from the side of the track where he could stand so as to pull his fire.

Wherefore, defendant requests that a New Trial be granted in this action.

R. J. BORYER,

Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 5, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy. [374]

*In the District Court for the Territory of Alaska,
Third Division.*

SPECIAL APRIL, 1913, TERM—MAY 5TH—
22D COURT DAY—MONDAY.

C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY CO., a Corporation,

Defendant.

Order Denying Motion for New Trial.

Coming on to be heard upon defendant's motion for a new trial, filed in the above-entitled cause; J. H. Cobb appearing for plaintiff and against said motion; R. J. Boryer appearing for defendant and for said motion, and after arguments had and the Court being fully advised in the premises,

IT IS ORDERED that said motion for a new trial be and the same is hereby denied, to which order and ruling of the Court defendant excepts and exception is duly allowed.

Entered Court Journal No. C.-2, page No. 82.

[375]

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED, as Admx. of the Estate of J. E.
REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Verdict.

We, the jury, duly selected, impaneled, sworn and charged in the above-entitled action, do find for the plaintiff and against the defendant and assess plaintiff's damages at Twenty Thousand Dollars (\$20,000.00).

Dated at Cordova, Alaska, this May 3d, 1913, *day of May, A. D. 1913.*

E. F. BELL,
Foreman.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 3, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy.

Entered Court Journal No. C.—2, page No. 74.
[376]

*In the District Court for Alaska, Third Division, at
Cordova.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate of
J. E. REED, Decd.,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Judgment.

This cause came on regularly to be heard, and thereupon came the plaintiff, by her attorney, Mr. J. H. Cobb, and announced ready for trial; came also the defendant by its attorney, Mr. R. J. Boryer, and likewise announced ready; and thereupon came a jury of good and lawful men, to wit, E. F. Bell, and eleven others, who having been duly tried, selected, impaneled and sworn, and having heard the evidence, the argument of counsel and the instructions of the Court, retired in charge of a bailiff to consider of their verdict; and after due deliberation had, returned into open court the following verdict, to wit:

C.—50.

Mrs. E. A. REED, as Admx. of the Estate of J. E.
REED, Decd.,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

VERDICT.

We the jury, selected, impaneled, sworn and charged in the above-entitled cause, do find for the plaintiff and against [377] the defendant, and assess the plaintiff's damages at Twenty Thousand (\$20,000) Dollars.

Dated at Cordova, Alaska, this May 3d, 1913, *day of May A. D. 1913.*

Signed—E. F. BELL,
Foreman.

—which said verdict was by the Court received and ordered filed. And the defendant's motion for a new trial having been heretofore overruled and denied, now, on motion of Mr. Cobb, for the plaintiff, for judgment upon the verdict,

It is considered by the Court, and so ordered and adjudged, that the plaintiff, Mrs. E. A. Reed, as administratrix of the estate of J. E. Reed, Decd., do have and recover of and from the defendant, the Copper River & Northwestern Railway Company, a corporation, the sum of Twenty Thousand Dollars (\$20,000), with interest thereon from the date hereof at the rate of 8 per cent per annum, and all costs and disbursements herein incurred, and taxed at the sum of \$340.00, *Dollars*, for all of which let execution issue.

Done in open court this the 6th day of May, 1913.

· PETER D. OVERFIELD,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. May 6, 1913. Angus McBride, Clerk. By Thos. S. Scott, Deputy.

Entered Court Journal No. C.—2, page No. 85.
[378]

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

**Order Fixing Time to File and Present Bill of
Exceptions and Granting Stay.**

Coming on to be heard upon motion of R. J. Boryer for an order of the Court, fixing the time to file and present defendant's bill of exceptions in the above-entitled cause, and for a stay of execution; J. H. Cobb appearing for plaintiff and R. J. Boryer appearing for the defendant, and the Court being fully advised in the premises,

IT IS ORDERED that defendant be granted 60 days to file and present its bill of exceptions in the above-entitled cause, and

IT IS FURTHER ORDERED that a stay of execution be had for said period.

Special April, 1913, Term—May 5th—22d Court Day—Monday.

Entered Court Journal No. C.—2, page No. 82.
[379]

*In the District Court for Alaska, Division No. Three,
at Cordova.*

No. C.—50.

Mrs. E. A. REED, as Administratrix, etc.,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY CO.,

Defendants.

**Stipulation [Extending Time to August 1, 1913, to
Settle Bill of Exceptions].**

It is hereby stipulated that the time for settling the Bill of Exceptions herein may be extended to, and inclusive of August 1st, 1913, and execution shall not issue prior to said date.

Dated June 30th, 1913.

J. H. COBB,

Attorney for Plaintiff.

R. J. BORYER,

Per JNO. W. WINN,

Attorney for Defendant.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. July 17, 1913. E. W. Pettit, Clerk.

Filed in the District Court, Territory of Alaska, Third Division. July 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [380]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Petition for Writ of Error.

Comes now the Copper River & Northwestern Railway Company, a corporation, the defendant herein, and complains and stated that on the 6th day of May, A. D. 1913, the above-entitled Court entered judgment herein in favor of the plaintiff above named, and against the defendant above named, in which judgment, and in the proceedings had prior thereto in the above-entitled cause, certain errors were committed to the prejudice of this defendant, all of which will appear in the detail from the Assignment of Errors which is filed with this petition.

WHEREFORE, this defendant prays that a writ of error issue in its behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the record and proceedings, with all things concerning the same, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

And defendant further prays for an order fixing the amount of bond for a supersedeas in said cause.

Dated this the 17th day of July, A. D. 1913.

R. J. BORYER,
Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 17, 1913. E. W. Pettit, Clerk. By ———, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [381]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

Order Allowing Writ of Error.

On this day came the defendant, the Copper River & Northwestern Railway Company, a corporation, by its attorney, and filed herein and presented to the Court its petition praying for the allowance of a Writ of Error, and an assignment of errors to be urged by it, praying also that a transcript of the record and proceedings in said cause, with all things con-

cerning the same, be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that the amount of bond for supersedeas in said cause be fixed. On consideration whereof, the Court does hereby allow a Writ of Error as prayed for.

Dated this the 17th day of July, A. D. 1913.

FRED M. BROWN,

Judge for the District Court for the Territory and District of Alaska, Third Division.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 18, 1913. E. W. Pettit, Clerk. By —————, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [382]

*In the District Court for the Territory of Alaska,
Third Division.*

C.—50.

Mrs. E. A. REED, Administratrix of the Estate of
J. E. REED,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS,
that the Copper River and Northwestern Railway
Company, a corporation, defendant in the above-

entitled action, as principal, and American Surety Company, of New York, a corporation organized and existing under the laws of the State of New York, duly authorized to do business in Alaska and to sign bonds as surety therein as surety, are held and firmly bound unto Mrs. E. A. Reed, as administratrix of the estate of J. E. Reed, plaintiff and defendant in error in the above-entitled cause, in the penal sum of Twenty-five Thousand Dollars, lawful money of the United States of America, to be paid to the said Mrs. E. A. Reed, as administratrix of the estate of J. E. Reed, her successors or assigns, her executors and administrators, for which payment well and truly to be made, we bind ourselves and each of us, and severally, and our and each of our successors and assigns, firmly by these presents.

Sealed with our seals and dated this the 11th day of July, A. D. 1913.

The condition of the foregoing obligation is such that

WHEREAS, the said Copper River & Northwestern Railway Company, a corporation, defendant in said cause, as the above-named principal obligator, is suing out a Writ of [383] Error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause entered May 6th, 1913, by the Circuit Court of the United States for the District Court for the District and Territory of Alaska, Third Division, in favor of said plaintiff for and against said defendant, for the sum of Twenty Thousand (\$20,000.00) Dollars and costs.

WHEREAS, the said principal obligator desires to give good and sufficient security in accordance with the statute in such cases made and provided for, all costs and damages to be occasioned by said Writ of Error and to operate as a supersedeas upon such judgment and stay the execution thereof pending the hearing and decision of said Circuit Court of Appeals upon said Writ of Error.

NOW, THEREFORE, the condition of this obligation is such that if the above-bounden principal obligator, defendant in said cause, shall prosecute said Writ of Error to effect, and if it fail to make good its plea, shall answer all damages, interest and costs, then this obligation shall be void; otherwise to remain in full force and effect.

COPPER RIVER & NORTHWESTERN
RY. CO.

By R. W. BAXTER,
Vice-Prest.

AMERICAN SURETY COMPANY OF
NEW YORK,

[Seal] By EDWARD J. LYONS,
Resident Vice-President.

By S. H. MELROSE,
Resident Assistant Secretary.

Approved as a cost bond July 18, 1913.

FRED M. BROWN,
District Judge.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 18, 1913. E. W. Pettit, Clerk.

Filed in the District Court, Territory of Alaska,
Third Division. Jul. 29, 1913. Arthur Lang, Clerk.
By V. A. Paine, Deputy. [384]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

Writ of Error [Copy].

The President of the United States of America, to
the Honorable Judge of the District Court for
the Territory and District of Alaska, Third
Division, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment upon a verdict, which
is in the said District Court before you, or some of
you, between Mrs. E. A. Reed, as administratrix of
the estate of J. E. Reed, deceased, the original plain-
tiff and the defendant in error, and the Copper River
& Northwestern Railway Company, the original
defendant and the plaintiff in error, manifest error
hath happened to the damage of said the Copper
River & Northwestern Railway Company, plaintiff
in error, as by its answer appears, we being willing

that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, together with this writ, so that you have the same in San Francisco, in said circuit, on the 16th day of August, A. D. 1913, and that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein [385] to correct that error, which of right and according to law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 17th day of July, in the year of our Lord one thousand nine hundred and thirteen.

[Seal] ARTHUR LANG,
Clerk of the District Court for the Territory and
District of Alaska, Third Division.

Allowed by:

FRED M. BROWN,
Presiding Judge in the District Court for the Terri-
tory and District of Alaska, Third Division.

Copy of this Writ of Error received and service acknowledged this the 17th day of July, A. D. 1913.

J. H. COBB,
Attorney for Defendant in Error.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 17, 1913. E. W. Pettit, Clerk. By —————, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [386]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

Writ of Error [Original].

The President of the United States of America, to
the Honorable Judge of the District Court for
the Territory and District of Alaska, Third
Division, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment upon a verdict, which
is in the said District Court before you, or some of
you, between Mrs. E. A. Reed, as administratrix of
the estate of J. E. Reed, deceased, the original plain-
tiff and the defendant in error, and the Copper River
& Northwestern Railway Company, the original
defendant and the plaintiff in error, manifest error

hath happened to the damage of said the Copper River & Northwestern Railway Company, plaintiff in error, as by its answer appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, together with this writ, so that you have the same in San Francisco, in said Circuit, on the 16th day of August, A. D. 1913, and that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein [387] to correct that error, which of right and according to law and custom of the United States ought to be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, the 17 day of July, in the year of our Lord one thousand nine hundred and thirteen.

[Seal] ARTHUR LANG,
Clerk of the District Court for the Territory and
District of Alaska, Third Division.

Allowed by:

FRED M. BROWN,
Presiding Judge in the District Court for the Territory and District of Alaska, Third Division.

Copy of this Writ of Error received and service acknowledged this the 17th day of July, A. D. 1913.

J. H. COBB,

Attorney for Defendant in Error.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 17, 1913. E. A. Pettit, Clerk. By ————. Deputy. [388]

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [389]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

Citation [on Writ of Error (Copy)].

United States of America.

The President of the United States to Mrs. E. A. Reed, as Administratrix of the Estate of J. E. Reed, Deceased, Greeting:

You are cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the courtroom of said court, in the city of San Francisco, in the State of California,

within thirty days after the date of this citation, pursuant to writ of error filed in the Clerk's office of the District Court for the Territory of Alaska, Third Division, wherein the Copper River & Northwestern Railway Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, the 17 day of July, in the year of our Lord one thousand nine hundred and thirteen.

FRED M. BROWN,

Judge in the District Court for the Territory and District of Alaska, Third Division. [390]

Copy of this Citation received and service acknowledged this the 17th day of July, A. D. 1913.

J. H. COBB,

Attorney for Defendant in Error.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 17, 1913. E. W. Pettit, Clerk. By ———, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [391]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate of
J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Citation [on Writ of Error (Original)].

United States of America.

The President of the United States to Mrs. E. A.
Reed, as Administratrix of the Estate of J. E.
Reed, Deceased, Greeting:

You are cited and admonished to be and appear in
the United States Circuit Court of Appeals for the
Ninth Circuit at the courtroom of said Court in the
city of San Francisco, in the State of California,
within thirty days after the date of this citation,
pursuant to writ of error filed in the Clerk's office
of the District Court for the Territory of Alaska,
Third Division, wherein the Copper River & North-
western Railway Company is plaintiff in error, and
you are defendant in error, to show cause, if any
there be, why the judgment in said writ of error
mentioned should not be corrected and speedy jus-
tice not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, the 17 day of July, in the year of our Lord one thousand nine hundred and thirteen.

FRED M. BROWN,

Judge in the District Court for the Territory and District of Alaska, Third Division. [392]

Copy of this Citation received and service acknowledged this the 17th day of July, A. D. 1913.

J. H. COBB,

Attorney for Defendant in Error. [393]

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 17, 1913. E. W. Pettit, Clerk. By —————, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [394]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

Assignment of Errors.

Comes now the defendant in the above-entitled cause and files the following assignment of errors upon which it will rely upon its prosecution of the writ of error in the above-entitled cause:

1.

The Court erred in overruling plaintiff in error's challenge to Juror Adam Swan, to which ruling plaintiff in error duly excepted and its exception allowed:

"Q. (Mr. BORYER.) I will ask you if you served as a juror within the last year in this Court or in this Division."

"A. I served—not as a trial juror, no."

"Q. What did you serve as?"

"A. I served on the special venire of the Grand Jury in Valdez last fall."

"Q. In this court?"

"A. The court was then in Valdez."

By the COURT.—The record will show.

"Q. In this division?"

"A. In this division."

Mr. BORYER.—I submit a challenge.

Mr. COBB.—We resist the challenge.

The COURT.—The challenge is overruled. To which ruling of [395] the Court defendant is allowed an exception.

2.

The Court erred in permitting defendant in error to question the Juror W. C. McCall regarding the ownership of the Copper River & Northwestern

Railway Company and the mine at Latouche, to which plaintiff in error excepted and exception was allowed. The proceedings being as follows:

“Q. (Mr. COBB.) Are you in the employ of the mine at Latouche?” “A. Yes, sir.”

“Q. You know, do you not, that the Copper River & Northwestern Railway Company and that mine are owned by the same people or practically the same people?”

“A. I have heard so.”

“Q. That is generally understood, is it not?”

Mr. BORYER.—That is just the point I raised a moment ago. I object to the question for the reason that I was not permitted to introduce the identical same question.

The COURT.—You may answer the question.

Exception taken and allowed.

“Q. Would that fact influence you in any way in arriving at a verdict in this case?”

“A. It would not.”

3.

The Court erred in declaring recess or adjournment of Court after some of the jurors had been called to await the return of other jurors on other cases and the panel exhausted to which plaintiff in error excepted and exception was allowed. Proceedings of which were as follows:

“The panel having become exhausted, with a jury out considering another case—

By the COURT.—Unless the attorneys agree to go on with the jurors we have, I think I will take a recess until the other jurors come in.

Mr. BORYER.—I prefer that we have a full jury.

By the COURT.—The jurors who are now in the box will occupy the same position as though you may ultimately be chosen as far as conversation regarding [396] this case is concerned with anybody and if it should happen that other jury should come in by 4 o'clock, I would like to have you return into Court and we will take it up this afternoon; if they do not we will continue to-morrow morning, but we will adjourn tentatively until 4 o'clock this afternoon.

Mr. BORYER.—I want to take an exception—the defendant excepts to the Court's ruling in excusing the jury, for the reason that the law provides that when the panel is exhausted, that the panel shall be filled from the bystanders and that this was not done, in that the jury was excused for the purpose of awaiting the return of another jury that was then considering another case, and such jury would not be from the bystanders as required by law.

Exception allowed."

4.

The Court erred in permitting plaintiff to introduce in evidence certified copy of order appointing plaintiff administratrix of the estate of J. E. Reed, deceased, and letters of administration, to which defendant excepted and exception was allowed--which proceedings were as follows:

Mr. COBB.—“Plaintiff first offers in evi-

dence a certified copy of the order appointing the plaintiff administratrix of the estate of J. E. Reed, deceased."

Mr. BORYER.—"We desire to object, for the reason that the order is not accompanied by the petition and other papers upon which the order is based and for the further reason that this is not the proper manner of showing the appointment of an administratrix."

By the COURT.—"In what respect?"

Mr. BORYER.—"That the records themselves should be shown here."

Objection overruled. Defendant allowed an exception.

The certified copy of order appointing the plaintiff administratrix of the estate of J. E. Reed, deceased, is marked Plaintiff's Exhibit "A," is attached hereto and made a part hereof.

Mr. COBB.—"We next offer in evidence a certified copy from the same Probate Court of letters of administration."

Mr. BORYER.—"To which we make the same objection."

Objection overruled. Defendant allowed an exception.

Letters of administration marked Plaintiff's Exhibit "B" and attached and made a part hereof.
[397]

5.

The Court erred in permitting the witness O. L. Larson to testify regarding the leaving, running and operating of the train from Cordova over the

line of the Copper River & Northwestern Railway Company on the 31st day of December, 1911, and in overruling the objection of the plaintiff in error to said testimony, to which plaintiff in error excepted and exception allowed, which proceedings were as follows:

“Q. (Mr. COBB.) Do you recall a train leaving here, that is, the town of Cordova, to go out over the line of the Copper River & Northwestern Railway on the 31st day of December, 1911?” “A. Yes, sir.”

“Mr. BORYER.—I ask the answer be withdrawn—it was answered before I could object. I desire to object to the question for the reason that it is immaterial and irrelevant and not pertinent to the issues in the case. This accident is alleged to have occurred at Mile 75A and it is immaterial as to the operation or running of that train from Cordova up to that point under the issues of the case.”

“By the COURT.—I have no objection to the question. The objection will be overruled.”
Defendant allowed an exception.

“A. Yes, sir.”

“Q. Have you any memorandum made at the time of the time that train left?”

“A. Yes, sir.

“Q. Referring to that and refreshing your memory tell the jury what time the train went out from here?”

“A. The train left here on the 30th of December at one o'clock P. M.”

“Q. Now, what made up that train?”

“A. The train I had was—I don’t just know how many cars, I will look and see (referring to memorandum-book). There was six cars in that train besides the engine.”

“Q. What was the first engine?”

“A. Engine #102 I believe; next to the engine was a box-car and then a gondola flat car; following that was two box-cars and a coach on the rear.”

6.

The Court erred in permitting the witness O. L. Larson to testify [398] regarding the crews on the trains had been continuously on service, on duty from the time they left Cordova up to the day following the time they left Cordova, and in overruling the objection of plaintiff in error to said testimony, to which plaintiff in error excepted and exception was allowed, which proceedings were as follows:

“Q. (Mr. COBB.) State whether or not the crews on those trains had been continuously on service, on duty, from the time they left here up to that hour.”

Mr. BORYER.—“I desire to interpose an objection for the reason that it is incompetent, irrelevant and immaterial and it is not pertinent to the issues in the case.”

By the COURT.—“For what reason?”

Mr. BORYER.—“For the reason that it has nothing to do with the issues in the case,—it tends to prove nothing as to the issues raised in the pleadings.”

By the COURT.—“You probably understand, without going into details, the statute referred to by Mr. Cobb in his statement.”

Mr. BORYER.—“I understand the statute but I desire to make the objection.”

By the COURT.—“If that is all you wish to say about the objection it will be overruled and exception allowed.”

7.

The Court erred in permitting witness O. L. Larson to testify regarding section-house at 78 and taking anybody aboard and in overruling plaintiff in error exception taken and allowed, which proceedings were as follows:

“Q. (Mr. COBB.) When you left there state if you took anybody aboard.”

Mr. BORYER.—“We object to that as irrelevant and immaterial and tends to prove nothing under the issues and pleadings.”

Objection overruled. Defendant allowed an exception.

“A. I don’t remember whether they took anybody aboard the rotary or not—I don’t remember picking up anybody myself on the train.”

“Q. You don’t remember?” “A. No.”

8.

The Court erred in permitting witness Henry Lee to testify relative to train crews and rotary crews being continuously on duty since [399] leaving Cordova and overruling of exception of plaintiff in error, which was duly excepted to and exception allowed, which testimony was as follows:

“Q. (Mr. COBB.) Now, tell the jury whether or not the train crews, the crew you have mentioned on the rotary and pusher engines, had been continuously on duty since they left Cordova?” “A. Yes, sir.”

Mr. BORYER.—“I object to that—make the same objection.”

Objection overruled. Defendant allowed an exception.

9.

The Court erred in permitting witness Henry Lee to testify relative to section-men and overruling exception of plaintiff in error, which was duly excepted to and exception allowed, which testimony was as follows:

“Q. (Mr. COBB.) And you left this bridge—did you see any section-men around?”

Mr. BORYER.—“We object to that as incompetent, irrelevant and immaterial and does not tend to prove anything along the issues of the case.”

Objection overruled. Defendant allowed an exception.

“Q. (Mr. COBB.) Did you see any section-men around?”

“A. I did—at the time we were there, not when we were leaving.”

“Q. At the time you were there you saw some?” “A. Yes, sir.”

“Q. You didn’t see any when you were leaving?” “A. No.”

“Q. You don’t know whether they remained there or not?” “A. No, I do not.”

10.

The Court erred in permitting witness Henry Lee in testifying relative to cleaning of pan on bridge, in overruling objection of plaintiff in error to said testimony duly excepted and exception allowed, which testimony [400] was as follows:

“Q. (Mr. COBB.) Would there have been any difficulty or any reason that you know of in cleaning out those engines at any other place at that time except on the trestle?”

Mr. BORYER.—“We object to the question as calling for a conclusion, irrelevant and immaterial and does not tend to prove anything as to the fire at that particular point.”

Mr. COBB.—“The testimony of the witness is this: These men had been on duty there at that time according to the testimony now in for 32 hours. Mr. Boryer has stated to the jury in his opening statement that they had orders not to dump on the bridges, not to clean the fires on the bridges; there was a reason why somebody disobeyed that and it ought to go to the jury.”

By the COURT.—“I think I will allow it.”
Defendant allowed an exception to the ruling.

“Q. (Mr. COBB.) State, if you know, if there was any reason that made it particularly difficult to clean fires with this sort of ash-pan at any other place.”

“A. The snow was deep on the side of the

track and you would have to dig out the snow on the side to get down and take out the pan.”

“Q. Would that condition exist on the trestle?” “A. No, sir.”

“Q. I want you to give the jury some idea if you can approximately of the condition of the snow on each side of the track, how it lay on each side of the track and whether it was hard or soft.”

“A. Well, I should judge it was three and a half to four feet deep along there after you got off the bridge and other places deeper, but from, I think, $3\frac{1}{2}$ to 4 feet deep, maybe deeper and came right up alongside of the rotary, that close (indicating) where you would have to dig out considerable and would naturally have a crust where the head of the rotary would be forcing against the snow—it would be rather hard digging right close to the track.”

“Q. So was it possible to clean that engine, the ashes out of that hoe pan, without first digging out that hard crust of snow, unless you cleaned them on the trestle?”

“A. No, not very well.”

11.

The Court erred in permitting witness Henry Lee to testify relative to what other railroads usually resort to see that track is in [401] order before train is sent out, and overruling objection of plaintiff in error to said testimony duly excepted to and exception allowed, which testimony was as follows:

“Q. (Mr. COBB.) Do railroads that you

have been accustomed to usually resort to any other method to see that the track is in order before a train is sent out?"

Mr. BORYER.—“We object to that as incompetent, irrelevant and immaterial and does not tend to prove anything under the issues as raised in the pleadings.”

Objection overruled. Defendant allowed an exception. .

“A. Yes, sir.”

“Q. What is done to safeguard the track besides the sprinklers?”

“A. Why, they have track-walkers.”

12.

The Court erred in permitting witness Henry Lee, over the objections and exceptions of plaintiff in error duly allowed, to testify regarding running time on trip of December 28th and the number of hours continuously on duty, duly excepted to and exceptions allowed which testimony is as follows:

“Q. (Mr. COBB.) Coming back to the beginning of this trip—were you on the trip on which this train left here on the 28th of December, 1911?”

Mr. BORYER.—“We object to that as incompetent and irrelevant and tends to prove nothing under the issues and simply burdens the record.”

By the COURT.—“It has already been testified to. Unless it is something different than he has already testified to, the objection will be sustained. I let you go back to the 25th.”

Mr. COBB.—“This is preliminary and I think it is something new.”

“Q. Were you out on the trip of the 28th?”

Mr. BORYER.—“We object to that for the reason that it is incompetent, irrelevant and immaterial and tends to prove nothing under the issues.”

Objection overruled. Defendant allowed an exception.

“A. Yes, I left Cordova on the 28th.” [402]

“Q. How long were you out on that trip?”

“A. The time shows 24 hours between Cordova and Mile 39.”

“Q. Now, wasn't that the trip—I am not sure but I want to get at it—that the rotary was broken?”

“A. No, this was another rotary that was broken.”

“Q. Was there a rotary broken on that trip?”

“A. There was a rotary broken on this trip also.”

“Q. On the trip of the 28th?”

“A. I think so, yes.”

“Q. Where did the little rotary come from that was sent up to relieve the one that was broken at Mile 39 or 52 on the trip of the 30th?”

“A. A little rotary came from Cordova.”

“Q. It was sent out from Cordova?”

“A. Yes, sir.”

“Q. When you reached Tiekel, how many hours had you been continuously on duty up to

the time that you went off duty—how many continuous hours on that trip going up?”

Mr. BORYER.—“We object to that as incompetent and irrelevant and tends to prove nothing under the issues.”

Objection overruled. Defendant allowed an exception.

13.

The Court erred in sustaining defendant in error exception to questions asked witness Henry Lee regarding objection to hours worked, to which exception was taken and allowed, which questions were as follows:

“Q. (Mr. BORYER.) Did you raise any objection to going, to taking that trip out that morning?”

Mr. COBB.—“We object to that as irrelevant and immaterial.”

Objection sustained. Defendant allowed an exception.

14.

The Court erred in sustaining defendant's in error objection to witness Henry Lee testifying regarding work, which was duly excepted to and allowed, and which question was as follows:

“Q. (Mr. BORYER.) I will ask you if you have ever worked over the [403] required time as provided by law, and the service hour law, since September 1, 1912?”

Mr. COBB.—“Same objection.”

Objection sustained. Defendant allowed an exception.

15.

The Court erred in permitting witness Kenneth Holden to testify to time to make run from Cordova to Tielkel during month, and to overruling plaintiff's in error exception duly taken and allowed to following testimony:

"Q. You were in the employ of the company the whole month of December?"

"A. Yes, sir."

"Q. Did you make trips out over the road?"

"A. Yes, sir."

"Q. About how long would it take you during that month to make the run to Tielkel?"

Mr. BORYER.—"We object as incompetent, irrelevant and immaterial and tends to prove nothing under the issues in this case."

Objection overruled. Defendant allowed an exception.

"A. All the way from seven to twenty-four hours."

16.

The Court erred in permitting the witness Frank Townsend to testify relative to it being common or uncommon thing for bridges to be fired by engines passing over them, and in overruling the objection of plaintiff in error to such testimony, which was duly excepted to and exception allowed, said testimony being as follows:

"Q. (Mr. COBB.) I will ask you, from your experience as an engineer on railroads, if it is a very common or uncommon thing for bridges to be fired by engines passing over them?"

Mr. BORYER.—“We object to that question as incompetent, irrelevant and immaterial and not pertinent to the issues in the case.”

Objection overruled. Defendant allowed an exception.

“A. There was a time when they were all wooden bridges, it wasn’t uncommon at all.”

[404]

The Court erred in refusing plaintiff in error to show how much of deceased earnings was given defendant in error for the use of her and the household expense which was duly excepted to and exception allowed which questions were as follows:

Q. (Mr. BORYER.) “What proportion of that did he give to you?”

A. “I had all of it.”

Q. “He turned it all over to you?”

A. “He did.”

Q. “For you to use or to keep for him?”

A. “To keep—to use what was necessary for our expenses.”

Q. “About how much would you use per month?”

Mr. COBB.—“I don’t think that is a fair question and is not material.”

The WITNESS.—“It is according to where we were living.”

By the COURT.—“What is the purpose of the question?”

Mr. BORYER.—“The purpose is to show what portion of his salary was used in the household expenses and given to her.”

By the COURT.—“I don’t see that that would have anything to do with the elements of damages that would be necessary if any are considered by the jury, as I understand the law—unless you can call to my attention something I have overlooked.”

Mr. BORYER.—“That is a point I want to reserve in the case.”

By the COURT.—“You may reserve it—exception allowed.”

18.

The Court erred in making the following statement to the jury regarding the following letter:

By the COURT.—“I will say this to the jury—a letter from Mr. Baxter to this company, to this superintendent, probably would not be relative evidence at all unless it is later on connected with the Interstate Commerce Commission to Baxter or some one else. I do not understand that Baxter belongs to the Interstate Commerce Commission, or represents them in any way.”

Mr. BORYER.—“I will now read the letter.”

(COPY OF LETTER.)

COPPER RIVER & NORTHWESTERN
RAILWAY COMPANY.

Seattle, Washington, June 3, 1912.

R. W. Baxter,
Vice-President.

Mr. Geo. Geiger,
Superintendent, Cordova, Alaska.

Dear Sir:

We have been advised by the Interstate Commerce Commission that they will take charge of all railroads in Alaska August 1st, after which time it will be necessary for us to comply in all respects with the Commission's requirements and for your information and guidance am sending you under separate cover, one copy each of

Act to regulate commerce (as amended) and acts supplementary thereto, which include, Commerce Court Act, safety appliance Acts, Act requiring monthly report of accidents, Arbitration Acts, Hours of Service Act, Boiler Inspection Act.

Tariff Circular #18A and supplement #2 thereto and General Order #11.

Conference Rulings Bulletin #5, with Supplement #1 thereto and other supplements, bringing the Commissions conference rulings up to date.

Please acknowledge receipt of these publica-

tions, advising that you will comply with the requirements of Commission.

Yours truly,
(Signed) R. W. BAXTER,
V. P.

19.

The Court erred in refusing to permit plaintiff in error to show that the crew on the northbound train proceeded north from Miles Glacier or the halfway point between the two terminals—Cordova and Tiekel—willingly with the rotary that was working rather than attempt to return to Cordova with broken rotary, to which refusal plaintiff in error excepted and exception allowed, which offered testimony was as follows:

“Q. (Mr. BORYER.) Now, when X1 met you at Miles Glacier was there any of the crew that wanted to come back home that you know of?”

Mr. COBB.—“We object to that as irrelevant and immaterial.”

“Q. Did any of them raise any protest as to going any further?”

Mr. COBB.—“We object as irrelevant and immaterial.” [406]

Objection sustained. Defendant allowed an exception.

Q. “I will ask you if they did not proceed willingly, northbound?”

Same objection.

By the COURT.—“I consider it makes no difference under the law whether the employees

wanted to work or not."

Defendant allowed an exception.

20.

The Court erred in overruling defendant's Motion to Quash and Set Aside Summons and Service of Summons and Return of Summons, to which defendant excepted and exception was allowed.

21.

The Court erred in overruling defendant's Motion to Make More Definite and Certain and to Strike, to which defendant duly excepted and exception allowed.

22.

The Court erred in overruling Defendant's Demurrer to Complaint, to which defendant excepted and exception was allowed.

23.

The Court erred in overruling defendant's exception to jurors, wherein the second special venire was selected from and limited to the towns of Valdez and Seward, and excusing the first special venire which was drawn and selected from the body of the District who had reported for duty and not excused until after the second special venire had reported for duty from Seward and Valdez.

24.

The Court erred in denying motion of plaintiff in error for Directed Verdict, for the reason that the evidence of plaintiff shows that the plaintiff Reed was killed by reason of the burning of bridge 75A, that this bridge was burned by reason of the pan of the rotary being dumped on this bridge, that Reed

was in charge of the rotary and the fireman who cleaned this pan on the bridge saw him clean the pan on the bridge, knew it was [407] dangerous and against all rules and orders to clean pans on the bridges, and having cleaned and known that the rotary pan was cleaned on the bridge, violated the further rule of failing to see to or extinguish his fires dumped on the bridge, which rule was made for the safety of employees and passengers—to which *ruling duly* excepted and exception was allowed.

25.

The Court erred in giving the following instruction, to which plaintiff in error excepted and its exception was allowed:

Instruction:

“Was the cause of the death of Reed due to a negligence on the part of the defendant company in some duty reasonably imposed upon it, to be exercised by it in maintaining proper inspection of its road and roadbed, bridges and track and for which duty the defendant company is liable.”

26.

The Court erred in giving the following instruction, to which plaintiff in error excepted and its exception was allowed:

Instruction:

“That in any action brought against any common carrier under or by virtue of any of the provisions of this Act, to recover damages for injuries to or for the death of any of its employees, that such employee shall not be held to have as-

sumed the risks of his employment in any case where the violation of such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.”

· 27.

The Court erred in giving the following instruction, to which plaintiff in error excepted and its exception was allowed:

Instruction:

“It is the duty of a railroad company to keep and maintain its track, roadbed and ways in a reasonably good and safe condition for the operation of its engines and trains over the same, and to exercise such care in that respect as not to unnecessarily endanger the lives of its employees operating its train and engines over such road; and a failure of the railroad company to exercise reasonable and ordinary care in that respect is negligence which will render the company liable for all damages to an employee, or if killed, to his personal representative, for injuries resulting from such negligence. This duty to keep and maintain its roadbed, track and ways in safe condition is not satisfied merely by constructing it safe to begin with, but it is the duty of the company to have the track and ways watched and inspected at sufficiently reasonable intervals as to discover and repair or guard against defects arising from the operation of the road which would endanger the lives [408] and persons of its employees operating

its trains and engines over the same, and a failure to exercise ordinary care in that respect is negligence. If you find and believe from the evidence in this case that J. E. Reed was in the employ of the defendant as an engineer on or about January 1st, 1912, and that while so employed the engine upon which he was at work was derailed and he was killed, and that the accident in which he was killed was caused by the negligence of the defendant in failing to keep its roadbed, track or ways in a reasonably safe condition, then your verdict should be for the plaintiff."

28.

The Court erred in giving the following instruction, to which plaintiff in error excepted and its exception was allowed:

Instruction:

"If you find for the plaintiff under the instructions given you, you will determine the amount of your verdict. In arriving at this amount you will assess the damage at such sum as will compensate the plaintiff and her minor children for their pecuniary loss resulting from the death of the husband and father. In estimating this loss it is proper for you to take into consideration the age, health, habits, occupation, expectation of life, mental and physical capacity for and disposition to labor, and the probable increase or decrease of that capacity with the lapse of time; his earning capacity; the care and attention, the instruction and training, one of

his disposition and character may be expected to give to his family—and thus determine the value of the life. From this amount deduct the personal expenses of the deceased, and the balance, reduced to its present value, would be the present amount of your verdict, provided that the minor children of the deceased would not be entitled to compensation for the death of the deceased for a period beyond their attaining their majority.”

29.

The Court erred in giving the following instruction, to which plaintiff in error excepted and its exception was allowed:

Instruction:

“You are instructed that the defendant company is a common carrier by railroad; that as such it is liable in damages to the plaintiff and her two children for the death of J. E. Reed if such death you find resulted in whole or in part from the negligence of any of the defendant’s officers, agents or employees, or by reason of any defect due to the said defendant company’s negligence in its roadbed, bridge or ties or track at point of bridge 75A on said defendant company’s railroad on January 1, 1911.”

30.

The Court erred in giving the following instruction, to which [409] plaintiff in error excepted and its exception was allowed:

Instruction:

“You are further instructed that the defend-

ant company would be none the less liable under the foregoing instruction if you find that the said J. E. Reed may have been guilty of contributory negligence in causing the condition at Mile 75 which resulted in his death, but you are further instructed in this connection that if you should find that the negligence of J. E. Reed contributed to the cause of his death, the damages, if any, resulting should be diminished in proportion to the amount of negligence attributable to the said J. E. Reed in causing his death."

31.

The Court erred in giving the following instruction, to which plaintiff in error excepted and its exception was allowed:

Instruction:

"You are instructed that the act of March 4, 1907, passed by the Congress of the United States and applicable to the defendant company, its officers, agents and employees engaged in the transportation of passengers or property by railroad in the Territory of Alaska, provides that it shall be unlawful for any common carrier, its officers or agents, subject to this act, to require or permit any employee subject to this act, to be or remain on duty for a longer period than sixteen consecutive hours, and whenever such employee of such common carrier shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty, until he has had at least ten consecutive hours off duty and no

such employee who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having at least eight consecutive hours off duty, provided that the provisions of this Act shall not apply in any case of casualty or unavoidable accident or the act of God, nor where the delay was the result of a cause not known to the carrier or its officers or agents in charge of such employee at the time said employee left a terminal and which could not have been foreseen, and provided further that the provisions of this act shall not apply to the crews of wrecking or relief trains. You are further instructed that this act became effective and in full force and effect on March 4, 1908."

32.

The Court erred in giving the following instruction, to which plaintiff in error excepted and its exception was allowed:

Instruction:

"You are further instructed that if at the time of the death of J. E. Reed the defendant company was guilty of violating the statute of the United States providing that [410] employees of its railroad should not be employed in any one day of twenty-four hours more than sixteen consecutive hours, without providing a rest of eight hours, and you further find the breach of this law by defendant in any way contributed to the injury and death of Reed, and then if you further find under the last above hereinbefore in-

struction that the said J. E. Reed was guilty of contributory negligence with the defendant company in causing his death, then the said contributory negligence of the said J. E. Reed, if any, should not be considered by you in assessing the damages, if any, against the defendant company in favor of the plaintiff and her children herein.”

33.

The Court erred in giving the following instruction, to which plaintiff in error excepted and its exception was allowed:

Instruction:

“You are instructed that if you find the deceased was guilty of contributing by his negligent acts in dumping or knowingly permitting his fireman to dump and leave unextinguished cinders and ashes from his rotary on the bridge in question, and that this caused the death of J. E. Reed, yet if you further find that the defendant company was subsequently and before the time the rotary fell through the said bridge on January 1, 1912, negligent in not providing through its proper agents and employees the presence of a track walker to inspect the said road at the point in question, at bridge 75A, and you further find that such track walker was not so engaged by said defendant company and the presence of such track walker would naturally have discovered the condition of the bridge in time to have prevented the accident on January 1, 1912, then the said defendant is liable and your

verdict must be for the plaintiff.”

34.

The Court erred in giving the following instruction, to which plaintiff in error excepted and its exception was allowed:

Instruction:

“You are instructed that if you find the defendant company was in no way negligent in its duties to its employees and to the deceased, and the injury to the said deceased occurred alone by reason of deceased’s own negligence or the negligence of his fellow-servants, then your verdict must be for the defendant, unless you further find that the defendant was guilty of a violation of the labor hour laws as hereinbefore set out and such violation contributed to the injury of the deceased.”

35.

The Court erred in refusing to give to the jury the following instruction requested by plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

“You are instructed that if the Rules of the Copper River & Northwestern Railway Company required the deceased to [411] extinguish all fire in ashes removed from ash-pans of his engines or rotary and the fire removed from the engine or rotary was not extinguished and this fire was the cause of the roadbed being out of repair and the ties burned and destroyed by reason of same having been dumped upon the

roadbed at the point or place where the deceased was injured, then you are instructed that the deceased assumed the risks of not seeing that the fire was out and cannot recover in this case.”

36.

The Court erred in refusing to give to the jury the following instruction requested by plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

“You are instructed that if the Copper River & Northwestern Railway Company’s roadbed was out of repair, the ties burned and destroyed by ashes and cinders by being dumped upon the roadbed and said deceased knew that ashes and cinders had negligently been allowed to be dumped upon the roadbed which ashes and cinders caused the ties to be burned and destroyed by ashes and the roadbed made unsafe, you are instructed that the plaintiff cannot recover in this case.”

37.

The Court erred in refusing to give to the jury the following instruction requested by plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

“You are instructed that it was the duty of the deceased in this case to obey all rules and regulations of the Copper River & Northwestern Railway Company and that if the deceased failed, neglected or refused to obey said rules

and his injury was caused by reason of the deceased failing, neglecting or refusing to obey said rules, the deceased was guilty of contributory negligence.”

38.

The Court erred in refusing to give to the jury the following instruction requested by plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

“You are instructed that if you find from the evidence that the deceased, J. E. Reed, was engineer of the rotary and as such engineer, he has charge of the rotary, and as such engineer he is responsible for the conduct and acts of the fireman and from the evidence you find that the fireman of the rotary dumped or cleaned the pan of the rotary on the bridge and that this was the cause of the unsafe condition of the roadbed, then you are instructed that the deceased cannot recover in this action.” [412]

39.

The Court erred in refusing to give to the jury the following instruction requested by plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

“You are instructed that if you find from the evidence that it was the duty of the deceased to know the contents of the time-table in use on the road at the time of the accident to him and a time-table was in use and that said time-table

contained certain special rules, one of which stated where the bulletin-books are located, and it was the duty of the deceased to examine the bulletin-books and said bulletin-books were accessible and contained a bulletin that required the deceased to extinguish all fire in ashes removed from ash-pans, and you find that deceased failed to extinguish all fire removed from the ash-pan of his rotary and that his failure to extinguish or see that it was extinguished caused the bridge to burn and make the roadbed unsafe and this was the cause of J. E. Reed's death, then you are instructed that the deceased was guilty of negligence for which the defendant, Copper River & Northwestern Railway Company, cannot be held liable."

40.

The Court erred in refusing to give to the jury the following instruction requested by plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

"You are instructed that if the deceased, being a man of mature age and experience in railroading, knew or by the exercise of ordinary railroad experience and intelligence, that it was dangerous to dump or allow to be dumped from his rotary the pan on the bridge and that the bridge was made unsafe by reason of the pan from his rotary being dumped on the bridge and he was injured by reason of the unsafe condition of the bridge, caused by the dumping of the pan

of his rotary on the bridge, then you are instructed that the deceased was guilty of negligence.”

41.

The Court erred in refusing to give to the jury the following instruction requested by plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

“You are instructed that if the deceased, being a man of mature age and experience in railroading, knew or by the exercise of ordinary railroad experience and intelligence, that it was dangerous to dump or allow to be dumped from his rotary the pan on the bridge and that the bridge was made unsafe by reason of the pan from his rotary being dumped on the bridge and he was injured by reason of the unsafe condition of the bridge, caused by the dumping of the pan of his rotary on the [413] bridge, then you are instructed that the deceased was guilty of negligence and cannot recover in this action.”

42.

The Court erred in refusing to give to the jury the following instruction requested by plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

“You are instructed that if you find from the evidence that the deceased as engineer of the rotary is responsible for the acts of the fireman and the fireman of his rotary cleaned the pan of the

rotary on the bridge and it was dangerous to clean the pan on the bridge and the bridge was made unsafe by reason of the pan having been cleaned thereon and the deceased met his death by reason of the unsafe condition of the bridge caused by the pan being cleaned thereon, then you are instructed that the deceased was guilty of negligence and cannot recover in this action.”

43.

The Court erred in refusing to give to the jury the following instruction requested by plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

“You are instructed that if you find from the evidence that the deceased knew that the fireman on the rotary cleaned his pan on the bridge, which was made unsafe by reason of the fireman cleaning his pan on the bridge and the deceased met his death by reason of the fireman cleaning his pan on the bridge and failing to extinguish all fire from the ashes of the pan cleaned on the bridge, then you are instructed that the deceased assumed all of the risks and hazards arising from or by reason of the pan being cleaned on the bridge.”

44.

The Court erred in refusing to give to the jury the following instruction requested by the plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

“You are instructed that if you find from the evidence that the deceased had charge of the rotary and had supervision over the fireman and is responsible for the acts of the fireman in connection with the fireman’s work around and upon the rotary, and you further find that the fireman of the rotary cleaned his pan on the bridge and by reason of having cleaned the pan on the bridge, the bridge was made unsafe and the deceased met his death by reason of the unsafe condition of the bridge, then you are instructed that deceased cannot recover in this action.”

45.

The Court erred in refusing to give to the jury the following instruction [414] requested by plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

“You are instructed that if you find from the evidence that the deceased was in charge of the rotary and as such had supervision over the fireman and that it was the deceased’s duty to see that the fireman extinguished all fire in ashes removed from the ash-pan on the rotary and the deceased failed or neglected to do this, and by reason of the deceased’s failure to see that the fireman extinguished all fire and he met his death by reason of failure to see that the fireman extinguished all fire, then you are instructed that the deceased was guilty of negligence and plaintiff cannot recover in this action.”

46.

The Court erred in refusing to give to the jury the following instruction requested by plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

“You are instructed that if you find from the evidence that the deceased’s injury was caused by reason of negligence of the fireman of a fellow-servant of the deceased, that he cannot recover in this action.”

47.

The Court erred in refusing to give to the jury the following instruction requested by plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

“You are instructed that the burden is upon the plaintiff to establish her cause of action by a preponderance of evidence and cannot recover unless she proves by the preponderance of evidence not only that the defendant, Copper River & Northwestern Railway Company, was negligent, but must also prove that the defendant’s negligence contributed to the cause of the injury to the deceased and if she fails to establish these facts by the preponderance of the evidence, the plaintiff cannot recover.”

48.

The Court erred in refusing to give to the jury the following instruction requested by plaintiff in error, to which refusal plaintiff in error duly excepted and

its exception was allowed:

Instruction:

“You are instructed that it was the duty of the deceased, J. E. Reed, to be conversant with the rules of the Copper River & Northwestern Railway Company pertaining to the [415] running and operating of the rotary including rules regarding the extinguishing of fire from the ashpan of his rotary.”

49.

The Court erred in refusing to give to the jury the following instruction requested by plaintiff in error, to which refusal plaintiff in error duly excepted and its exception was allowed:

Instruction:

“You are instructed that if you find from the evidence that the deceased, J. E. Reed, disobeyed any rule of the Copper River & Northwestern Railway Company and he was injured or killed by reason of his disobeying said rule or rules, you are instructed that the plaintiff cannot recover in this action.”

50.

The Court erred in denying the motion of plaintiff in error for judgment in this case in its favor and against said plaintiff, notwithstanding the verdict rendered in said cause, to which plaintiff in error excepted and its exception was allowed.

51.

The Court erred in denying the motion of plaintiff in error for a new trial and in its order and judgment overruling such motion and granting judgment

in favor of plaintiff for the amount of the verdict found by the jury in favor of plaintiff with costs, which order and judgment was duly excepted to by defendant and its exception allowed by the Court. Said motion was based on the files and records and proceedings herein, and was made upon the following grounds specified therein and on each thereof, to wit:

I.

“Insufficiency of evidence to sustain or justify the verdict in the following particulars:

A. That the jury was not justified in finding defendant guilty of any negligence as alleged by the plaintiff nor in finding against said defendant.

B. In that plaintiff based her cause of action because on the [416] first day of January, 1912, defendant had negligently allowed its roadbed to get out of repair, the ties to be burned and destroyed by ashes and cinders negligently allowed by defendant to be dumped upon the roadbed and otherwise suffered to become utterly unsafe and unfit as a roadbed. That the plaintiff had agreed and stated that the words “and otherwise suffered to become utterly unsafe and unfit as a roadbed” applied to said ties being burned and destroyed by ashes and cinders negligently allowed by defendant to be dumped upon the roadbed.

C. That the plaintiff’s witnesses admitted that on the night of December 30th, 1911, the plaintiff’s deceased husband was in charge of and had charge over Rotary X1, that the fireman of this rotary was under the supervision and instructions of the deceased husband, who was engineer and had charge of said ro-

tary; that the fireman of this rotary against the rules and orders of the defendant company cleaned or dumped the ash-pan of his rotary on bridge 75A, which bridge was destroyed by fire by reason of the ashes being dumped from said rotary on the day of January, 1912; that the plaintiff's deceased husband was killed by reason of the fire of said bridge caused by reason of the ash-pan of said rotary being dumped or cleaned on said bridge, which act was against a known rule of the company and the further known rule that required the plaintiff's deceased husband to extinguish all fire from ashes removed from ash-pan at any and all places."

II.

A. "That plaintiff's witnesses admitted that they left Cordova on the 30th of December, 1911, the first terminal of the Copper River & Northwestern Railway Company, or the defendant, and that the second or next terminal of defendant company is located at Tiekel or Mile 101 beyond a point where Bridge 75A is located; that said bridge being located on Mile 76 and being between the terminal at Cordova and Tiekel.

B. "That the plaintiff's evidence shows conclusively that the [417] reason they were delayed and required to be on duty from the time they left Cordova until they reached Tiekel was because that the rotary that they started from Cordova with met with an accident which necessitated repairing said rotary and returning it to Cordova, and that they were required to await the arrival of another rotary from Cordova, and that during all of the time between said

terminals they were on a single track and were fighting snow, and that it was dangerous to stop said rotary while fighting snow, for the reason that a snow or wind would possibly snow them in and delay them for an indefinite time; that said railroad of the defendant is a single track from Cordova, its first terminal and Tiekel, its second terminal. That the acts which required said employees to be on duty for the time that they were on duty was caused by casualties and unavoidable accidents and the act of God and could not have been foreseen by the defendant, and that said delay was not the result of a cause known to the carrier or its officers, agents in charge of said employees at the time said employees left the first terminal nor which could have been foreseen by the defendant."

C. "That the plaintiff's witness Albright, who cleaned the ash-pan on the bridge, which fire caused the bridge to burn that caused the death of plaintiff's husband, admitted that the reason he violated the rule of cleaning his fire on the bridge and the further rule of seeing that all fire from ashes removed from ash-pan is extinguished, was because they wished to save time, and for the further reason that if he cleaned the pan off of the bridge he would have been required to shovel some snow from the side of the track so that he could use his hoe for the purpose of cleaning out his pan."

III.

"That Bridge 75A was shown to be a safe bridge from the evidence for the reason that this rotary with its engines on the night before the accident to the

plaintiff's deceased husband had crossed this bridge several times; that there were not any evidence in this case [418] to show that a track-walker or section-man is necessary over that particular portion of the road, nor does the law require that the defendant keep a track-walker or section-man for the purpose of seeing that engineers or trainmen obey rules and orders."

IV.

"That the verdict is against the evidence and law."

V.

"That the amount of damages allowed in this case is excessive and was influenced by passion or prejudice."

VI.

"Errors of law occurring in the trial and exceptions made by the defendant."

VII.

"Accident or surprise by which ordinary prudence could not have guarded against."

VIII.

"In denying defendant's motion for a directed verdict."

IX.

"That the plaintiff bases the accident upon the following negligence as alleged in her complaint in paragraph 3, which is as follows: 'That on the first day of January, 1912, defendant had negligently allowed its roadbed to get out of repair, the ties to be burned and destroyed by ashes and cinders negligently allowed by defendant to be dumped upon the roadbed and otherwise suffered to become utterly unsafe and unfit as a

roadbed,' it being ruled by this Court on a motion to make more definite and certain and being agreed by attorney for the plaintiff that the following words: 'and otherwise suffered to become utterly unsafe and unfit as a roadbed,' referred to ashes and cinders being negligently dumped upon the roadbed. That the plaintiff against the objections of the defendant and exceptions taken introduced in evidence [419] matters relating to track-walkers and hours of work performed by the crews of the rotary and other engines pushing the rotary and the train crews on the local train, of the trip of said rotary and trains from the time they left Cordova terminal on the 30th of December, 1911, up until the night of the accident, January 1, 1912. That the pleadings and issues as made up in this case do not allege or in any way refer to such facts as would permit the defendant to anticipate that such evidence would be brought out or introduced or that the plaintiff was basing her cause of action partly on such acts and facts."

X.

"For the further reason that the instructions given on page 3 require that the jury consider whether J. E. Reed met his death by reason of the negligence of the defendant company in failing to maintain and inspect its road, and roadbed, bridges and track, that the law does not require the defendant to maintain and keep inspectors of roadbed, bridges and track until it has been shown by the plaintiff that such was necessary, and in no event does the law require the defendant to keep inspectors for the purpose of inspecting roadbed and bridges for the safety of one

who violates a rule and by violating said rule makes the roadbed or bridge unsafe.”

XI.

“For the further reason that the Court, on page 5 of its instructions, instructed the jury that in any action brought against any common carrier under or by virtue of any of the provisions of the Act referred to on said page, to recover damages for injuries to or for the death of any of its employees, that such employees shall not be held to have assumed the risks of his employment in any case where the violating of such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee. [420]

“That there are no allegations in the complaint and no evidence in the case to the effect that the said J. E. Reed met his death by *by* reason of the defendant violating any statute enacted for the safety of employees which contributed to the injury or death of the said J. E. Reed, and for the further reason that it was shown by the evidence that all work performed by the said J. E. Reed and other employees of the rotary crew and train crews was performed on a single track railway between Cordova, their starting terminal and the next terminal at Tiekel or Mile 101, and that the cause of the death of J. E. Reed was the burning of the Bridge 75A on Mile 75, the fire of which was caused by the deceased *permitted* his fireman to clean his rotary pan on this bridge, and for the further reason that he did not require or did not put out or extinguish all fire from ashes dumped from this pan onto the bridge, which is contrary to the rules of

the company, and plaintiff's evidence shows that the reason he dumped or cleaned his pan on this bridge was because he wished to save time and so he would not be required to shovel some snow from the side of the track where he could stand so as to pull his fire."

WHEREFORE, the defendant, plaintiff in error, prays that said Judgment may be *rendered, vacated* and set aside, and that the verdict found by the jury on which said Judgment was based may be vacated and set aside, and for such other and further relief or both in the premises as may be proper.

R. J. BORYER,

Attorney for Copper River & Northwestern Railway Company.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 17, 1913. E. W. Pettit, Clerk. By ———, Deputy.

Filed in the District Court, Territory of Alaska, Third Division, Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [421]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

Acknowledgment of Service of Papers on Writ of Error.

Service of the Petition for Writ of Error, Order Allowing Writ of Error, of the Assignment of Errors, of the Bond on Writ of Error, of the Citation on Writ of Error, and of Writ of Error in the above-entitled cause, filed in the above-entitled court on the 17th day of July, A. D. 1913, is hereby acknowledged, and receipt of true copies thereof on this 17 day of July, A. D. 1913, is also acknowledged.

J. H. COBB,

Attorney for Defendant in Error.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 18, 1913. E. W. Pettit, Clerk. By —————, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [422]

[Hearing In Re Settlement of Bill of Exceptions.]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

In the Matter of the Appeal of Mrs. E. A. REED,
Administratrix of the Estate of J. E. REED,
Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

HEARING IN RE SETTLING BILL OF EX- CEPTIONS.

7:30 P. M., July 17, 1913.

Hon. F. M. BROWN, District Judge, Presiding;
Mr. JOHN H. COBB, for Plaintiff;
Messrs. R. J. BORYER and J. R. WINN, for
Defendant.

Mr. BORYER.—If it please your Honor, I have a stipulation I would like to file in this case petitioning for writ of error. This is a petition for writ of error in the case of Mrs. Reed *versus* The Copper River & Northwestern Railway Company. It has been agreed between counsel that the bond could be furnished by the surety company and that the amount be fixed in the sum of \$25,000. That is correct?

Mr. COBB.—That was the agreement, but the agreement was made more than sixty days ago and I don't think that this Court or any other, for that matter, has any power to approve anything more than a cost bond at this time. And if the Court has any doubt about that proposition * * * (offers to cite authorities). * * *

Mr. BORYER.— * * * The stipulation provides—the record will show, I think—that the stay of execution was for sixty days—the original stay of execution was for sixty days which terminated on the 15th of July, and this was for the purpose of giving further time in order to get the bond; in order to file the bond at this time and that was extended over to August the 1st of this year. I think Judge Winn recalls [423] those facts.

Mr. COBB.—No question about that. * * *

Mr. WINN.— * * * (After referring to *Pearce v. Sutherland*.) That simply shows that the Court will not encourage these technical points unless they are absolutely forced to do it, and I think in view of the circumstances besides of this stipulation not stating all the facts connected with it that we should possibly corroborate that or explain it by affidavits that this bond was agreed upon at that time, and I don't doubt but what counsel can agree upon extending the time to file the bond and have it approved by the Court. The only object they entered into that stipulation was to give Mr. Boryer time to get this bond or stay of proceedings granted for that purpose.

Mr. COBB.—That is all true. There is no difference between counsel. The only point about the matter is this: that within sixty days they did not sue out their writ of error. Could have got the supersedeas bond any time after that. I wouldn't care if they had taken to the 1st of August, but here is the situation. There is no question, I think, under the decisions that the Court is absolutely without legal power to make any supersedeas. * * *

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy.

Filed in the District Court, District of Alaska, First Division. Jul. 18, 1913. E. W. Pettit, Clerk. By ———, Deputy. [424]

*In the District Court for the Territory of Alaska,
Third Division.*

— No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

**Affidavit of R. J. Boryer in Support of Supersedeas
Bond.**

United States of America,
District of Alaska,—ss.

R. J. Boryer, being first duly sworn, upon his oath deposes and says: That he is now and has been at all times Attorney of Record for the defendant; that Judgment was entered in this case on the 6th day of May, 1913, at which time the Honorable Peter D. Overfield, the presiding Judge, entered an order allowing until July 14th for settling, signing and filing Bill of Exceptions and a stay of execution during said time. That shortly thereafter the said Honorable Peter D. Overfield was called from the Third Judicial Division, over which he presided, to the First Judicial Division for the purpose of holding court. That shortly after arriving in the First Judicial Division the said Court proceeded to the States and during his stay in the States his term of office expired and the Honorable Fred M. Brown was ap-

pointed Judge of the Third Judicial Division to succeed the Honorable Peter D. Overfield, after which the Honorable Fred M. Brown was called to the First Judicial Division for the purpose of holding a term of Court. That while the Honorable Peter D. Overfield was in Juneau, Alaska, and prior to [425] the appointment of the Honorable Fred M. Brown as Judge of the Third Judicial Division, there was no Judge presiding in the Third Judicial Division, all of which was between the date of entry of Judgment in this case and the time allowed for the settling and signing of the Bill of Exceptions and the stay of execution, to wit, between the 6th day of May, A. D. 1913, and the 14th day of July A. D. 1913; that by reason of the Honorable Peter D. Overfield being called to Juneau for the purpose of taking up judicial matters in the First Division and his departure for the States, and the Honorable Fred M. Brown being called to the First Judicial Division from the Third Judicial Division for the purpose of holding court, this affiant found it necessary to take up with the attorney for the plaintiff in this case, J. H. Cobb, a stipulation extending the time for suing out a Writ of Error and perfecting its Writ of Error including stay bond in this case. That J. H. Cobb, attorney for the plaintiff in this case, resides in Juneau, Alaska, a distance of about 600 miles from Cordova, where this affiant resides, and is only accessible by steamers about every 6 or 8 days; that this affiant wired John R. Winn, of Juneau, requesting him to secure from J. H. Cobb further extension of time to settle bill of exceptions and perfect rec-

ord for Appellate Court in the above case; that this affiant left Cordova for the purpose of going to Juneau to secure a stipulation from J. H. Cobb regarding the furnishing of a stay bond, signed by the American Surety Company and the amount of stay bond, and all proceedings necessary to perfecting Writ of Error in the above-entitled case. That upon my arrival in Juneau I took up with Mr. J. H. Cobb the matter of a stipulation extending the time for filing and presenting Writ of Error and stay bond to be signed by the American Surety Company and the amount of said bond; that the said conversation took place on Sunday and it was my understanding from my conversation with Mr. Cobb [426] that he consented and agreed that the defendant was to have until the first day of August, 1913, for the purpose of filing the Writ of Error in the above-entitled case and until said date to secure and file a stay bond in the aforesaid Writ of Error, and that Mr. Cobb agreed that he would accept a bond in the amount of \$25,000.00, signed by the American Surety Company, which bond he consented could be filed on or before the first day of August, A. D. 1913, and which bond was to act as and be a stay bond pending the decision of the Circuit Court of Appeals on Writ of Error to be sued out in the aforesaid case. That upon this understanding I immediately proceeded to Seattle on the same day for the purpose of securing the aforesaid bond, and did secure said bond according to my agreement with Mr. Cobb, and relying on said understanding returned to Juneau for the purpose of suing out the aforesaid Writ of Error and

filing the aforesaid bond according to my understanding with Mr. Cobb. That part of the aforesaid conversation and agreement was in the presence of John R. Winn, an attorney residing in Juneau, Alaska; that I have read the affidavit of John R. Winn, and the same is correct as to the matters and facts therein contained and the same took place in my presence. That relying on the above understanding, and it having been agreed that the stipulation was to be drawn and signed the following day and given to John R. Winn, I proceeding to Seattle for the purpose of getting aforesaid bond, which bond I secured in Seattle, signed by the American Surety Company in the amount of \$25,000.00, as per our agreement, and returned to Juneau for the purpose of having same filed and approved to stay execution in this case pending appeal, and hereby tender said bond at this time in this Court in the above-entitled case.

That by reason of the above understanding regarding the accepting of the aforesaid bond and filing of Writ of Error, and that the giving of said bond was consented [427] to by plaintiff's attorney, and was to be and act as a supersedeas bond pending the determination by the Circuit Court of Appeals of the Writ of Error in said case if filed on or before August 1st, 1913, this affiant did not file the Writ of Error or the Supersedeas bond until such date as they were presented and filed in this court, otherwise said Writ of Error and bond would have been filed on or before the 14th day of July, 1913.

That this plaintiff, Mrs. E. A. Reed, and the estate of J. E. Reed, deceased, in this case, have no property or money exempt from execution, and that if the judgment in this case should be reversed, and execution issued prior thereto against the defendant, the Copper River & Northwestern Railway Company, said defendant would be unable to recover said money.

That the defendant, Copper River & Northwestern Railway Company, is the owner of a railroad and right of way and equipment for running and operating a railroad, which railroad extends from Cordova, Alaska, to Kennecott, Alaska, a distance of 195 miles, and which road and equipment cost approximately twenty million dollars, and is now worth that amount, and is now operating and is solvent and able to respond and pay any final judgment obtained in this case, and unless a supersedeas bond is allowed said Writ of Error and its effect will be defeated.

R. J. BORYER.

Subscribed and sworn to before me this the 18th day of July, A. D. 1913.

[Seal]

R. E. ROBERTSON,

Notary Public in and for the District of Alaska,
Residing at Juneau.

Commission Expiring June 19, 1917.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 18, 1913. E. W. Pettit, Clerk.

Filed in the District Court, Territory of Alaska,
Third Division. Jul. 29, 1913. Arthur Lang, Clerk.
By V. A. Paine, Deputy. [428]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

**Affidavit of J. R. Winn in Support of Supersedeas
Bond.**

United States of America,
District of Alaska,—ss.

John R. Winn, being first duly sworn, upon his oath deposes and says: That I am a member of the Bar of the above-entitled court and am acquainted with J. H. Cobb and R. J. Boryer, two other members of said Bar. That this affiant had no connection with the above-entitled case as an attorney until some time just prior to the 29th day of June, A. D. 1913, at which time I received a telegram from R. J. Boryer from Cordova, Alaska, his place of residence, which telegram states substantially that he would be in Juneau on the steamer "Alameda" on or about the 29th day of June, and he desired me to see Mr.

'Cobb and obtain from him a stipulation for further time in which to settle the Bill of Exceptions and perfect the record for the Appellant Court in the above-entitled cause. However, I did not see Mr. 'Cobb until Mr. Boryer's arrival at Juneau on the 29th day of June, and at that time I entered the law office of Maloney & Cobb in the town of Juneau, found Mr. Boryer and Mr. Cobb engaged in conversation concerning the perfecting of the record in the [429] above-entitled cause for the Appellant Court and the obtaining of a supersedeas bond. Mr. Boryer desired thirty (30) days from the 14th day of July for the purpose last mentioned, but Mr. Cobb suggested that he thought the record ought to be perfected and a supersedeas obtained by August 1st, which said last mentioned time was agreed upon by and between Mr. Cobb and Mr. Boryer in my presence. Then Mr. Boryer stated, "Now, Mr. Cobb, it is understood that you will agree to a stay of execution until the first day of August, until I procure a Surety Company Bond to act as a supersedeas during the pendency of the action before the Appellant Court, and that you will accept a Surety Company Bond instead of the ordinary bond that is procured in cases of this kind," and Mr. Cobb said that he would agree to these matters, and it was agreed between Mr. Boryer and Mr. Cobb in my presence that the bond should be in the amount of \$25,000.00. That Mr. Cobb then agreed to draw up the stipulation in this case according to the undertaking that he had had with Mr. Boryer. Mr. Boryer then on that day departed for the

south, and on the following day Mr. Cobb drew up the stipulation which has been filed in this case, and when he presented it to me for my signature, I insisted that he should write therein the last clause, which reads as follows: "and execution shall not issue prior to said date," meaning the first day of August. I stated to Mr. Cobb at that time that unless that clause was put in something might happen that execution might issue before Mr. Boryer could put up a supersedeas bond, and Mr. Cobb wrote the clause in in his own handwriting. There is no question but what Mr. Cobb absolutely agreed that when the Surety Company Bond was filed that it was to act as a stay bond pending the decision of the Appellant Court in this case.

JNO. R. WINN.

Subscribed and sworn to before me this the 18th day of July, 1913.

[Seal]

R. E. ROBERTSON,
Notary Public in and for the District of Alaska,
Residing at Juneau, Alaska.

Commission [430] Expiring June 19, 1917.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 18, 1913. E. W. Pettit, Clerk.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk.
By V. A. Paine, Deputy. [431]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

**Counter-affidavit of J. H. Cobb on Application for
Supersedeas Bond.**

United States of America,
Territory of Alaska,—ss.

J. H. Cobb, being first duly sworn, upon his oath deposes and says: I am the attorney for the plaintiff in the above-entitled action. I have read the affidavits of R. J. Boryer and John R. Winn, dated the 18th day of July, 1913. Said affidavits are incorrect as regards what transpired on Sunday, the 29th day of June, 1913.

What did transpire on said day is as follows: The defendant company, having a stay of execution of sixty days, in which to settle bill of exceptions, which stay was granted, by Judge Overfield, Mr. Boryer, attorney for defendant, called on me on said 29th day of June, with Judge Winn, and asked me for a further extension of 30 days in which to settle the bill of exceptions, as Mr. Hamburger had not been able to get out his notes of the testimony.

I answered, inasmuch as any judge would grant such an extension, I was willing to so stipulate, but suggested he could get his bill of exceptions ready by August 1st, which date was agreed upon. [432]

Mr. Boryer then stated that they were going to get a bond with the American Surety Company as surety, and asked if I would accept such bond without objection for \$25,000.00, and I told him that I would. Regarding the matter of the bond, however, no stipulation was asked.

It was further agreed that the stipulation be reduced to writing next day, Monday, and Judge Winn would notify Mr. Boryer of the signing of the stipulation by wire to Ketchikan, where he would be on a steamer southbound at that time.

At no time in our conversation was the matter of suing out of the writ of error mentioned by anyone, and no request was made for stipulation extending time for suing out writ of error, within the time to make it operate as a supersedeas upon giving of surety.

On Monday following the above conversation, the stipulation was drawn in strict accordance with the above understanding, and is now on file herein. All this occurred more than two weeks before the expiration of time in which defendant could have sued out writ of error within which supersedeas could be given.

The clause in the stipulation against the issuance of execution prior to August 1st was put in at Judge Winn's request, but again nothing was said of the writ of error, or the time when it should be sued out.

I am sure that if I had been asked to enter into a stipulation to the effect that the writ of error might be sued out after the expiration of sixty days, Sundays excluded, from the date of judgment, and that a supersedeas and security be then given, I should have declined to enter into such stipulation on the ground that even by stipulation the bond so given would not be binding upon the surety, nor did it ever occur to me that what was said on June 29th would ever be claimed to mean anything further than was expressed in the stipulation, [433] drawn pursuant thereto on the day following, and which is now on file herein.

J. H. COBB.

Subscribed and sworn to before me this the 18th day of July, 1913.

V. A. T. ZOTT,

Notary Public in and for Alaska.

Commission Expires Feb. 20, 1917.

[Endorsed]: Filed in the District Court, District of Alaska, First Division. Jul. 18, 1913. E. W. Pettit, Clerk.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk.
By V. A. Paine, Deputy. [434]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

MRS. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Order on Supersedeas Bond.

Copper River & Northwestern Railway Company, by its attorney, having filed on the 17th day of July, A. D. 1913, petition for a Writ of Error, Assignment of Errors, and Bill of Exceptions, and said date having been fixed as a day for settling and signing said Bill of Exceptions, and said Copper River & Northwestern Railway Company, by its attorney, having presented a supersedeas bond for approval on said date, J. H. Cobb, attorney for plaintiff, defendant in error, objected to the Court approving said bond as a supersedeas or allowing a supersedeas, for the reason that the Court has no power to approve or allow said bond as a supersedeas bond or allow a supersedeas after the expiration of sixty (60) days, Sundays excluded, from the rendition of the Judgment. This objection of plaintiff having been taken under advisement and having been duly considered,

It is hereby ORDERED, ADJUDGED and DECREED that said objection be sustained, for the reason that after the expiration of sixty (60) days, Sundays excluded, from the date of the rendition of the Judgment, this Court does not have power to approve said bond or allow a supersedeas, the time for approving same under the statute having passed.

To which ruling the Copper River & Northwestern Railway Company, by its attorney, duly excepted, and its exception was allowed.

Dated this the 18th day of July, A. D. 1913.

FRED M. BROWN,

Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 19, 1913. E. W. Pettit, Clerk. By ————, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [435]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Order Staying Execution.

Copper River & Northwestern Railway Company having presented a bond to act as a supersedeas bond pending appeal in the above case, and objection having been raised by J. H. Cobb, attorney for plaintiff in this case, to the Court having power to approve said bond as a supersedeas bond, and the said J. H. Cobb having stated in open court that execution in this case would be withheld until counsel for defendant have an opportunity to present its application for stay of execution and supersedeas bond to the United States Circuit Court of Appeals for the Ninth Circuit at the session of said court in Seattle, Washington, in September, 1913,—

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that execution in this case be withheld until counsel for defendant, plaintiff in error, have an opportunity to present its application for supersedeas bond and stay of execution to the United States Circuit Court of Appeals for the Ninth Circuit at the session of said court in Seattle, in September, 1913.

Dated this the 19th day of July, A. D. 1913.

FRED M. BROWN,

Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 19, 1913. E. W. Pettit, Clerk. By ———, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [436]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Motion to Transmit Original Exhibits.

Comes now the defendant and moves the Court for an Order directing the Clerk of Court to send to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, the original exhibits in this cause, said exhibits being numbered, Plaintiff's Exhibits "A," "B," "C," and "D," and Defendant's Exhibits No. 1, 2 and 3, for the reason that it is impossible to copy all of said exhibits.

R. J. BORYER,

Attorney for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 17, 1913. E. W. Pettit, Clerk. By ———, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [437]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, a Corporation,
Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY,
Defendant.

**Order [Directing Transmission of Original Exhibits
to Appellate Court].**

On motion of the Copper River & Northwestern Railway Company, for an order requiring and directing the Clerk of this Court to send to the United States Circuit Court of Appeals for the Ninth Judicial Circuit the original exhibits in this cause, being numbered Plaintiff's Exhibits "A," "B," "C," "D," and Defendant's Exhibits "1, 2, 3," and it appearing to the satisfaction of the Court that said original exhibits should be returned to the Court of Appeals and that said motion should be granted,—

NOW, THEREFORE, it is hereby ORDERED that the Clerk of this court be and he is hereby authorized and directed to send to the United States Circuit Court of Appeals for the Ninth Judicial Circuit each and all of the said original exhibits in this cause as a part of the return to the Writ of Error in this case.

Dated this the 17th day of June, A. D. 1913.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 17, 1913. E. W. Pettit, Clerk. By ———, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [438]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,
Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

**Order Certifying Up Papers Regarding
Supersedeas Bond.**

This matter coming on for hearing on the motion of counsel for defendant, to make all of the papers filed upon the application for supersedeas bond a part of the records to be forwarded to the Appellant Court, and said motion is allowed and is hereby ordered that the Stipulation heretofore entered into between the attorney representing the respective parties on the 30th day of June, A. D. 1913, respecting

the stay of execution, etc., until the first day of August, A. D. 1913, also the affidavit of John R. Winn, the affidavit of R. J. Boryer and the affidavit of J. H. Cobb, and the stenographer's notes of the admission of J. H. Cobb in open court concerning the supersedeas, and any and all papers connected with said application are hereby made a part of the record of this case, and the Clerk is ordered to certify the same upon the Writ of Error herein.

Dated this the 19th day of July, A. D. 1913.

FRED M. BROWN,

Judge.

[Endorsed]: Filed in the District Court, Territory of Alaska, 1st Division. Jul. 19, 1913. E. W. Pettit, Clerk. By ———, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [439]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Praeipie for Transcript.

To the Clerk of Above Court.

You will please make, certify and transmit forthwith to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, at San Francisco, California, a copy of the record in the above-entitled cause as a return to the Writ of Error heretofore sued out of said Circuit Court of Appeals to review the judgment in said cause, consisting of the following files, records and proceedings in said cause:

Complaint.

Motion to Quash Service and Affidavit regarding same.

Order on Motion to Quash Service and Exception.

Motion for Change of Place of Trial.

Motion and Order Withdrawing Motion for Change of Place of Trial.

Motion to Make More Definite and Certain.

Order and Exception on Motion to Make More Definite and Certain, and Minute Order which states the following words: "*and Otherwise suffered to become utterly unsafe and unfit as a roadbed,*" that said clause qualified and had reference to the dumping of ashes on the roadbed, and amendments to complaint by interlineation.

Demurrer and Order on Demurrer and Exception.

[440]

Answer.

Reply.

Order for the Selection of Petit Jury for April Term, 1913, at Cordova.

Order for First Special Venire.

Order for Second Special Venire.

Order Excusing First Special Venire.

Record showing exception to dismissal and excusing of First Special Venire.

Exception to Jurors and Exhibits attached.

Motion for Nonsuit and Order Denying same.

Defendant's Request for Instructions to Jury.

Motion for Directed Verdict, order and exception to same.

Motion for Judgment notwithstanding same and Order and Execution on same.

Motion for New Trial, Order and Exception on same. Verdict.

Judgment.

Order Extending Time to Make and File Exceptions.

Order Extending Time to Prepare, Serve and File Bill of Exceptions.

Admission of Service of Bill of Exceptions.

Bill of Exceptions, with Judge's certificate and Court stenographer's certificate attached thereto.

Order Settling and Allowing Bill of Exceptions.

Certificate of Judge to Bill of Exceptions.

Petition for Writ of Error.

Order Allowing Writ of Error and Fixing the Amount of Penalty of Supersedeas Bond.

Assignment of Errors.

Bond for Costs and Supersedeas on Writ of Error.

Writ of Error, and Copy.

Order Directing Transmission of Original Exhibits to Appellant Court.

All Minute and Journal Entries and Orders. [441]

Citation, and Copy.

Acceptance of Service of Papers on Writ of Error.

Motion and Order to Send Up Original Exhibits.

This Praecipe.

R. J. BORYER,

Attorney for Defendant.

Dated Aug. 1st, A. D. 1913.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division. Aug. 1, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [442]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

**Order to Transfer Records and Files to Third
Division.**

The motion of R. J. Boryer, attorney for defendant herein, to transfer the Records and Files in the above case to the Clerk of the court of the Third Division, at Valdez, Alaska, in which said records and files belong,

It is hereby ORDERED that the Clerk of the court of the First Division forward forthwith the records

and files in the above-entitled case to the Clerk of the court, Third Division, at Valdez, Alaska.

Dated this the 19th day of July, A. D. 1913.

FRED M. BROWN,

Judge. [443]

**[Plaintiff's Exhibit "A"—Decree Appointing
Administratrix.]**

*In the Probate Court of the Territory of Alaska,
Cordova Precinct.*

Before O. A. TUCKER, U. S. Commissioner and Ex-
officio Probate Judge.

In the Matter of the Estate of JOHN E. REED,
Deceased.

DECREE APPOINTING ADMINISTRATRIX.

ESTHER REED, wife of John E. Reed, deceased, having on this 17th day of January, A. D. 1912, filed in this court a petition praying that she be appointed administratrix of the estate of the said John E. Reed, deceased, and also an affidavit setting forth the names and residence of the heirs of said deceased, and that said deceased died intestate, and the Court being fully advised in all the premises,

Now, Therefore, IT IS CONSIDERED, ORDERED, ADJUDGED and DECREED that the said Esther Reed be, and she hereby is appointed Administratrix of the estate of John E. Reed upon furnishing of a bond according to law, the same to be filed in this court, fixed in the sum of Five Hundred Dollars (\$500).

AND IT IS HEREBY ORDERED that Letters of Administration upon the estate of said John E. Reed, deceased, issue to the said Esther Reed.

Done in open court this 12th day of January, A. D. 1912.

[Commissioner Seal] O. A. TUCKER,
U. S. Commissioner and Ex-officio Probate Judge.

I hereby certify that the above is a true and correct copy of DECREE APPOINTING ADMINISTRATION on file in my office.

Cordova, Alaska, April 29, 1913.

[Seal] A. J. ADAMS,
U. S. Commissioner and Ex-officio Recorder.

Plaintiff's Exhibit "A." Cause No. C.—50.
[443A]

**[Plaintiff's Exhibit "B"—Letters of
Administration.]**

*In the Probate Court for the District of Alaska,
Third Division, in and for Cordova Precinct.*

Before O. A. TUCKER, Commissioner and Ex-
officio Probate Judge.

In the Matter of the Estate of JOHN E. REED, De-
ceased.

LETTERS OF ADMINISTRATION.

District of Alaska,
Cordova Precinct,—ss.

To all persons to whom these presents shall come,
Greeting:

Know ye, that it appearing to the Commissioner

aforesaid that John E. Reed has died intestate, leaving at the time of his death property in this District, such Commissioner has duly appointed Mrs. Esther A. Reed administratrix of the Estate of such JOHN E. REED, Decd. This, therefore, authorizes the said Esther A. Reed to administer the estate of the said John E. Reed, deceased, according to law.

In testimony whereof I have hereunto subscribed my name and affixed the seal of this court said 17th day of January, 1912.

O. A. TUCKER,

Commissioner, and Ex-officio Probate Judge.

United States of America,
Territory of Alaska,—ss.

I, A. J. ADAMS, U. S. Commissioner and ex-officio Probate Judge for Alaska, Third Division, Cordova Precinct, do hereby certify that the above and foregoing is a full, true, and correct copy of the Letters of Administration in the case of the Estate of John E. Reed, Decd., as the same appears on file in my office in said cause.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Court this 29th day of April, 1913.

[Seal]

A. J. ADAMS,

U. S. Commissioner and Ex-officio Probate Judge.

Plaintiff's Exhibit "B." Cause No. C.—50.

[443B]

[Plaintiff's Exhibit "C."]

AMERICAN LOCOMOTIVE COMPANY



The Rotary Snow Plow

The only plow for removing snow of any character and any depth, quickly and easily, without danger to equipment and men.

AMERICAN LOCOMOTIVE COMPANY



Rotary snow plow, built for the Denver, Northwestern & Pacific Railway

—4—

Plaintiff's Exhibit C. Cause No. C.—50. [443C]

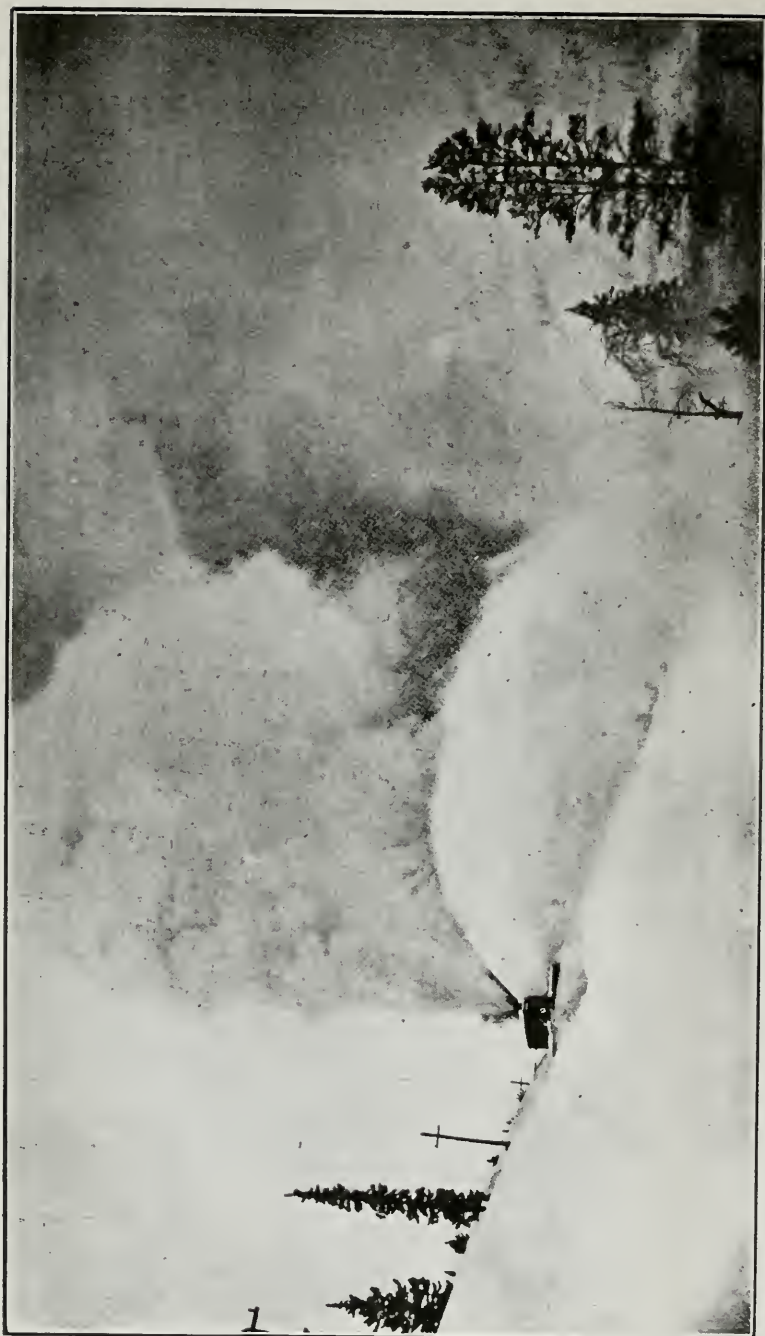
Rotary Snow Plow

The dangers attending the use of snow plows of the wedge type in heavy drifts are thoroughly well known by railroad men. So also are the limitations of this type of plow in deep drifts and in hard-packed icy snow. For removing hard drifts something besides brute force is required, and the application of correct mechanical principles to this problem resulted in the design and construction of "The Rotary." This type of plow is adapted to removing snow of any character and any depth, quickly, easily and with no danger to equipment or men. Its design is the result, also, of a desire to prevent the spreading of rails and breaking down of bridges.

With the advent of the Rotary, snow fighting apparatus became available rendering it possible to deal with drifts which the wedge plow was unable to handle. In short, the Rotary works with certainty and regularity in the worst snow conditions, affording great relief from the dangers surrounding the use of wedge-plows.

Twenty years of successful operation of the Rotary on the various railroads between the Atlantic and the Pacific has demonstrated the fact that it is the cheapest and only reliable means for removing snow from railroad tracks.

The first Rotary ever built was put into operation on the Union Pacific in 1887 and raised blockades on that road which had baffled all efforts for weeks before it arrived. During the month of February of that year this plow ran over 3,000 miles and handled snow, in some places fifteen feet deep, at a cost of sixteen and one-half cents per mile. This included the working expenses of both Rotary and pusher and the pay of the crews operating them. After its successful trial, this plow was immediately purchased by the Union Pacific Company, and there are now a large number of Rotaries in operation on that system. No better proof than this, of the great success of such an entirely new departure from anything previously attempted, could be furnished.



The Rotary at Work in Heavy Snow

—6—

Plaintiff's Exhibit D. Cause No. C.—50. [443D]

**[Defendant's Exhibit No. 1—Rule Issued by the
Copper River and Northwestern Railway Com-
pany.]**

Cordova, Alaska, July 16, 1910.

**TO ALL ENGINEERS, FIREMEN, HOSTLERS,
AND ALL CONCERNED:**

Do not fail to Extinguish *ALL* fire in ashes re-
moved from ash pans.

No excuse will be taken for the burning of ties, or
other damage to property, as a result of a failure to
do this. Engineers will be held equally responsible
with their firemen in this matter.

J. R. VAN CLEVE,
Superintendent.

Defendant's Exhibit 1. Cause No. C.—50. [443E]

[Defendant's Exhibit No. 2.]
Copper River & Northwestern Railway

Time Table No. 2

Taking Effect Sunday, Oct. 16, 1910, at 12:01
o'clock a.m.

Sitka or 135th Meridian Time

DESTROY TIME TABLE OF PREVIOUS DATE

This Time Table is for the Government and Information of Employees Only. The Company reserves the right to vary therefrom as circumstances may require.

E. C. HAWKINS,
General Manager.

J. R. VAN CLEVE,
Superintendent.

NORTH BOUND		COPPER RIVER & NORTHWESTERN RAILWAY				SOUTH BOUND	
FIRST-CLASS		Distance From Cordova Wharf	Time Table No. 2 In Effect Sunday, Oct. 16, 1910		Distance From Chitina	FIRST-CLASS	
Special Rules	1		STATIONS			2	Special Rules
<p>The clock in the Dispatcher's office, Cordova, is Standard Time.</p> <p>Bulletin Books are located in the Dispatcher's office, Cordova, and at Chitina.</p> <p>Register Stations: Cordova and Chitina.</p> <p>Trains will not exceed 15 miles per hour approaching and crossing the following bridges:</p> <p>Flag Point Crossing, On Mile 27.</p> <p>Round Island Channel, On Mile 28.</p> <p>Hot Cake Channel, On Mile 34.</p> <p>Miles Glacier Crossing, On Mile 40.</p>	MIXED Leave Daily Except Sunday	0.0	CORDOVA (Wharf) 1.3	130.7	MIXED Arrive Daily Except Sunday	<p>NORTH BOUND TRAINS ARE SUPERIOR TO SOUTH BOUND TRAINS.</p> <p>Full face figures denote meeting or passing points</p> <p>ALL TRAINS MUST BE HANDLED UNDER ABSOLUTE CONTROL IN YARD LIMITS.</p>	
	8:00 a.m.	1.3	CORDOVA (Second Street Station) 4.6 W. Y. T.	129.4	4:00 p.m.		
	8:13	5.9	EYAK RIVER 6.8	124.8	3:45		
	8:35	12.7	SHERIDAN 9.5	118.0	3:25		
	9:03	22.3	ALAGANIK 4.0 W.	108.5	3:00		
	9:15	26.2	FLAG POINT 12.3	104.5	2:50		
		38.5	KATALLA JUNCTION 2.4 W.	92.2			
	9:57	40.9	GOAT MOUNTAIN 7.7	89.8	2:10		
	10:20	48.6	MILES GLACIER 6.9	82.1	1:50		
	10:45	54.6	ABERCROMBIE 8.6 W.	76.1	1:25		
		63.2	MORaine 3.7	67.5			
	11:30	66.9	BAIRD RIVER 11.2	63.8	12:40		
	12:05 p.m. 12:30	78.1	BREMNER 14.4 W.	52.6	12:05 p.m.		
	1:20	92.5	CLEAVE CREEK 8.6	38.2	10:30		
	1:55	101.1	TIEKEL 12.6 Y	29.6	9:55		
	2:40	113.7	URANATINA 10.7	17.0	9:10		
	3:20	124.4	WOOD CANYON 6.3	6.3	8:30		
	3:45 p.m.	130.7	CHITINA W. Y.	0.0	8:00 a.m.		
	ARRIVE Daily Except Sunday				LEAVE Daily Except Sunday		

Defendant's Exhibit 2. Cause No. C.—50. [443F]

**[Defendant's Exhibit No. 3—Letter Dated Cordova,
Alaska, June 3, 1912, R. W. Baxter to George
Geiger.]**

**COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY.**

SEATTLE, WASHINGTON.

R. W. BAXTER,
Vice-President.

June 3, 1912.

Mr. Geo. Geiger,
Superintendent,
Cordova, Alaska.

Dear Sir:—

We have been advised by the Interstate Commerce Commission that they will take charge of all railroads in Alaska August 1st, after which time it will be necessary for us to comply in all respects with the Commission's requirements and for your information and guidance am sending you under separate cover, one copy each of

Act to regulate commerce (as amended) and acts supplementary thereto, which include, Commerce Court Act, Safety Appliance Acts, Act requiring monthly report of accidents, Arbitration Act, Hours of Service Act, Boiler Inspection Act.....

Tariff Circular #18A and supplement #2 thereto and General Order #11.....

Conference Rulings Bulletin #5, with Supplement #1 thereto and other supplements, bring-

ing the Commission's conference rulings up to date.....

Please acknowledge receipt of these publications, advising that you will comply with the requirements of Commission.

Yours truly,

R. W. BAXTER,

J. J.

Defendant's Exhibit 3. Cause No. C.—50.
[443G]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,
Defendant.

**Order Allowing, Settling and Certifying Bill of
Exceptions.**

It appearing to the Court that the defendant has prepared and duly served upon the attorney for the plaintiff herein, within due time, a proposed Bill of Exceptions, and the Judge of said court having duly designated Thursday, the 17 day of July, 1913, as the time at which he would settle the Bill of Exceptions, and both parties having been informed of the time for settling the Bill of Exceptions as designated by the

Judge, and the said matter coming regularly on for hearing for the purpose of settling the said Bill of Exceptions on the 17 day of July, 1913, and attorneys for both parties having been present:

It was thereupon, and is hereby ordered that the proposed Bill of Exceptions be allowed, the same shall be and is hereby settled and allowed as a Bill of Exceptions herein and presented to the Judge of this court for his certificate.

And it further appearing to the Court that said proposed Bill of Exceptions conforms to the truth and is in proper form, it is therefore [444] ordered that the said bill is a true Bill of Exceptions, and the same is hereby approved, allowed and settled, and ordered filed and made a part of the record of said cause.

Done in open court this the 17 day of July, A. D. 1913.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, District of Alaska, 1st Division. Jul. 17, 1913. E. W. Pettit, Clerk. By ———, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [445]

*In the District Court for the Territory of Alaska,
Third Division.*

No. C.—50.

Mrs. E. A. REED, as Administratrix of the Estate
of J. E. REED, Deceased,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAIL-
WAY COMPANY, a Corporation,

Defendant.

Certificate to Bill of Exceptions.

I, Fred M. Brown, Judge of the above-entitled court, do hereby certify that the above and foregoing Bill of Exceptions in the above-entitled cause is a true bill of exceptions, and the same has been approved, allowed and settled, and ordered filed and made a part of the record of said cause.

Done in open court this the 17 day of July, A. D. 1913.

FRED M. BROWN,
Judge.

[Endorsed]: Filed in the District Court, District of Alaska, 1st Division. Jul. 17, 1913. E. W. Pettit, Clerk. By ———, Deputy.

Filed in the District Court, Territory of Alaska, Third Division. Jul. 29, 1913. Arthur Lang, Clerk. By V. A. Paine, Deputy. [446]

[Certificate of Clerk U. S. District Court to
Transcript of Record.]

*In the District Court for the Territory of Alaska,
Third Division.*

United States of America,

Territory of Alaska,

Third Division.—ss.

I, Arthur Lang, Clerk of the District Court, Territory of Alaska, Third Division, do hereby certify that the above and hereto annexed 446 pages, numbered from 1 to 446, inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above-entitled cause as the same appears on the records and files in my office: that this transcript is made in accordance with the praeceipe filed in my office on the 1st day of August, A. D. 1913.

That I hereby certify that the foregoing transcript has been prepared, examined and certified to by me, and that the costs thereof, amounting to \$190.50 has been paid to me by R. J. Boryer, Esq., one of the attorneys for the defendants and appellants.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 2d day of August, A. D. 1913.

[Seal]

ARTHUR LANG,

Clerk. [447]

[Endorsed]: No. 2301. United States Circuit Court of Appeals for the Ninth Circuit. Copper River & Northwestern Railway Company, a Corporation, Plaintiff in Error, vs. Mrs. E. A. Reed, as Administratrix of the Estate of J. E. Reed, Deceased, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Third Division.

Filed August 11, 1913.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

